TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1190

SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO AND COMPANHIA DE DIAMANTES DE ANGOLA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR CERTIORARI FILED APRIL 23, 1945.

CERTIORARI GRANTED APRIL 23, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

No.

SOCIETE INTERNATIONALE FORESTIERE et MINIERE du CONGO, and COMPANHIA de DIAMANTES de ANGOLA, PETITIONERS,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

Record from D. C. U. S., Southern District of New York	1
Summons	1
Return on Service of Writ	2
Return on Service of Writ	5
Complaint	5
Application for Temporary Restraining Order—January 29, 1945	28
Temporary Restraining Order—January 29, 1945	30
Affidavit of Edward S. Stimson—January 29, 1945	32
Affidavit of Edward S. Stimson—January 29, 1945	33
Motion for Preliminary Injunction—January 29, 1945	34
Modification of Temporary Restraining Order—January 31, 1945	35
Modification of Temporary Restraining Order re Funds—January 31, 1945	36
Order Extending and Amending Temporary Restraining Order—February 6, 1945	37
Affidavit of Edward S. Stimson—February 5, 1945	39
Order Continuing Temporary Restraining Order—February 14, 1945	41
Affidavit of Edward S. Stimson—February 14, 1945	42

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

Record from D. C. U. S., Southern District of New York—Continued
Order Extending Amending Temporary Restraining Order—February 26, 1945 43
Affidavit of Sydney H. Ball—February 28, 1945 44
Affidavit of George K. Sturm—March 1, 1945 48
Affidavit of John E. F. Wood—March 2, 1945 50
Order Amending and Extending Temporary Restraining Order—March 7, 1945 51
Affidavit of Edward S. Stimson—March 9, 1945 54
Affidavit of John E. F. Wood—March 13, 1945 66
Order Continuing Temporary Restraining Order—March 16, 1945 68
Exemption from Temporary Restraining Order—March 16, 1945 69
Affidavit of Albert E. Thiele—March 23, 1945 71
Order Continuing Temporary Restraining Order—March 27, 1945 75
Affidavit of Sydney S. Ball—March 27, 1945 76
Affidavit of George K. Sturm—March 27, 1945 82
Affidavit of Lucius W. Mayer—March 27, 1945 90
Affidavit of John E. F. Wood—March 27, 1945 91
Opinion, Mandelbaum, J.—March 28, 1945 97
Preliminary Injunction—April 3, 1945 99
Motion for Stay Denied—April 3, 1945 107
Motion for Leave to Take Depositions Before Answer—April 3, 1945 102
Affidavit of Edward S. Stimson—March 21, 1945 105
Clerk's Certificate 108

Order allowing certiorari 109

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

CIVIL ACTION FILE NO. 29-446.

UNITED STATES OF AMERICA,

Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, and GEORGE K. STURM,

Defendants.

SUMMONS—Filed January 29, 1945.

To the above ~~named~~ Defendants:

You are hereby summoned and required to serve upon Lawrence S. Apsey, Herbert A. Berman, Patrick A. Gibson, and Edward S. Stimson, Special Assistants to the Attorney General, plaintiff's attorneys, whose address Fourteenth Floor, 30 Broad Street, New York 4; New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ GEORGE H. FOLLMER
Clerk of Court.

(Seal of Court)

Date: January 29, 1945.

Return on Service of Writ.

I hereby certify and return that I served a copy of the Summons, Complaint, Affidavits, Application for Temporary Restraining Order, Temporary Restraining Order and Motion for Preliminary Injunction on the following defendants, to-wit:

Date 1945	*Served*
	De Beers Consolidated Mines, Ltd. By Serving:
Jan. 30	Sydney H. Ball at 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	Rogers, Mayer & Ball by Lucius Mayer, partner, at 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, at 30 Rockefeller Plaza, New York, N. Y. as general agent and cashier.
	Diamond Corporation, Ltd.
Jan. 30	Sydney H. Ball at 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	Rogers, Mayer & Ball by Lucius Mayer, partner, at 26 Beaver Street, New York, N. Y. as general agent and and cashier.
" 30	N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, 30 Rockefeller Plaza, New York, N. Y. as general agent and cashier.
" 30	Banque Diamantaire Anversoise S. A. by Michael Romanenko, at 30 Rockefeller Plaza, New York, N. Y. as general agent and cashier.
	Diamond Trading Corporation, Ltd.
Jan. 30	Sydney H. Ball at 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	Rogers, Mayer & Ball by Lucius Mayer, partner, 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, 30 Rockefeller Plaza, New York, N. Y. as general agent and cashier.

Date	*Served*
1945	
" 30	BANQUE DIAMANTAIRE ANVERSOISE S. A. by Michael Romanenko, at 630 Fifth Avenue, New York, N. Y. as general agent and cashier.
	SOCIETE GENERALE DE BELGIQUE.
Jan. 31	EDGAR SENGIER at 41 Broad Street, New York, N. Y. as general agent and cashier.
" 30	AFRICAN METALS CORPORATION by Richard Terwagne, Vice President at 41 Broad Street, New York, N. Y. as general agent and cashier.
" 30	INDUSTRIAL SALES CORPORATION by A. Scotto, Asst. Treasurer, at 500 Fifth Avenue, New York, N. Y. as general agent and cashier.
Feb. 1	JULIEN J. LEROY at 41 Broad Street, New York, N. Y. as general agent and cashier.
	SOCIETE MINIERE DU BECEKA.
Jan. 30	SYDNEY H. BALL, 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	GEORGE K. STURM, 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	ROGERS, MAYER & BALL by Lucius Mayer, partner, 26 Beaver Street, New York, N. Y. as general agent and cashier.
	SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO.
Jan. 30	SYDNEY H. BALL, 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	GEORGE K. STURM, 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 30	ROGERS, MAYER & BALL by Lucius Mayer, partner, at 26 Beaver Street, New York, N. Y. as general agent and cashier.
" 31	ALBERT E. THIELE at 120 Broadway, New York, N. Y. as Director.
	COMPANHIA DE DIAMANTES DE ANGOLA.
Jan. 30	SYDNEY H. BALL, 26 Beaver Street, New York, N. Y. as general agent and cashier.

7

8

9

	Date 1945	Served
10	" 30	GEORGE K. STURM, 26 Beaver Street, New York, N. Y. as general agent and cashier.
	" 30	ROGERS, MAYER & BALL by Lucius Mayer, partner, at 26 Beaver Street, New York, N. Y. as general agent and cashier.
	" 31	ALBERT E. THIELE at 120 Broadway, New York, N. Y. as a Director.
		CONSOLIDATED AFRICAN SELECTION TRUST, LTD.
	Jan. 30	RUSSELL JOHNSON PARKER at 120 Broadway, New
11		York, N. Y. as managing Director and general agent.
		SIERRA LEONE SELECTION TRUST, LTD.
	Jan. 30	RUSSELL JOHNSON PARKER at 120 Broadway, New York, N. Y. as managing Director and general agent.
	Jan. 31	RUSSELL JOHNSON PARKER in person at 120 Broadway, New York, N. Y.
	Jan. 31	ALBERT E. THIELE, in person at 120 Broadway, New York, N. Y.
	Jan. 30	GEORGE K. STURM in person at 26 Beaver Street, New York, N. Y.

12 I hereby certify further that I am unable to find the following defendants in my district, to wit:

LUTE J. PARKINSON
HERBERT H. VREELAND
SOLOMON R. GUGGENHEIM
GLENDENIN J. RYAN

JAMES E. MULCAHY,
U. S. Marshal, S. D. N. Y.

ENDORSED:
U. S. District Court
Filed: Feb. 5, 1945
S. D. of N. Y.

RETURN OF SERVICE ON WRIT. 13

I hereby certify, that upon the 17th day of February, 1945, in my District, I personally served the within additional summons and complaint upon the within-named Solomon R. Guggenheim, Trillora Court, Port Washington, N. Y., by leaving a copy thereof at his home with his adult superintendent, William Wilstead, who lives with him.

Dated, February 17, 1945.

SPENCER C. YOUNG,
United States Marshal,
Eastern District of New York,
per Rollo S. Criger, Deputy. 14

U. S. District Court,
Filed February 21, 1945
S. D. of N. Y.

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

COMPLAINT—Filed January 29, 1945.

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows: 15

I.

JURISDICTION AND VENUE.

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" commonly known as the Sherman Antitrust Act, and under the Act of Congress of August 27, 1894, c. 349, Sec. 74, 28 Stat. 570, as amended, entitled "An Act to reduce taxation, to provide revenue

16 for the Government, and for other purposes" commonly known as the Wilson Tariff Act, in order to prevent and restrain continuing violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

2. All of the corporate defendants do business in the United States and more particularly transact business in the Southern District of New York, have done so continuously for many years, and are found therein. Companhia de Diamantes de Angola (hereinafter called Diamang) has an office in the Southern District of New York. The individual defendants, Herbert H. Vreeland, Albert E. Thiele,
17 Lute J. Parkinson, and Russell Johnson Parker reside in the Southern District of New York.

II.

Defendants.

Corporate Defendants.

3. De Beers Consolidated Mines, Ltd. (hereinafter called De Beers), a corporation organized in 1888 under the laws of the Colony of the Cape of Good Hope, South
18 Africa, and now existing under the laws of the Province of the Cape of Good Hope, Union of South Africa, with an office and principal place of business at 36 Stockdale Street, Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant.

4. Diamond Corporation, Limited (hereinafter called Diamond Corporation), a corporation organized in 1930 and now existing under the laws of the Union of South Africa, with its principal office and place of business at Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant. De Beers owns 80% of its outstanding stock and the remaining 20% is owned by Consolidated Diamond Mines of South West Africa, Limited (hereinafter called Consolidated Diamond Mines).

5. Diamond Trading Company, Limited (hereinafter called Diamond Trading Company) a corporation organized in 1934 and now existing under the laws of the Union of South Africa with its principal office and place of business in London, England, and an office and place of business in Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant. De Beers and Diamond Corporation each own 50% of its stock. 19

6. Societe Generale de Belgique (hereinafter called Societe Generale), a corporation organized about 1903 (as a successor to corporations organized in 1822 and 1830), and now existing under the laws of the Kingdom of Belgium, is made a defendant. It owns approximately 3,500 of the approximately 5,000 industrial enterprises in Belgium and more than 50% of the mining, power, and raw materials industries of the Belgian Congo. It owns 77% of the 40,000 outstanding shares of the corporation designated below as Beceka and owns stock in Forminiere and Diamang. 20

7. Societe Minigre du Beceka (hereinafter called Beceka), a corporation organized in 1919 and now existing under the laws of the Belgian Congo, is made a defendant. It owns deposits which are the principal source of the world's industrial diamonds.

8. Societe Internationale Forestiere et Miniere du Congo (hereinafter called Forminiere), a corporation organized in 1906 and now existing under the laws of the Belgian Congo, with its principal office and place of business at Tshikapa, Belgian Congo, is made a defendant. It works the diamond deposits owned by Beceka and is the largest producer of diamonds in the Belgian Congo. Ninety-eight per cent of the diamonds it produces are industrial diamonds. 21

9. Diamang, a corporation organized in 1917 and now existing under the laws of Portugal, with its principal office at Lisbon, Portugal, is made a defendant. It produces substantially all diamonds mined in Portuguese Angola.

22 10. Consolidated African Selection Trust, Limited (hereinafter called Consolidated Selection), a corporation organized in 1924 and now existing under the laws of the United Kingdom, is made a defendant. It owns extensive diamond producing properties and is the largest diamond producer in the Gold Coast.

11. Sierra Leone Selection Trust, Limited (hereinafter called Sierra Selection), a corporation organized in 1934 and now existing under the laws of the United Kingdom, is made a defendant. It is a wholly owned subsidiary of Consolidated Selection and produces practically all diamonds that are produced in Sierra Leone.

23

Individual Defendants.

12. Herbert H. Vreeland, a resident of New York City, is made a defendant. He is now and since before 1924 has been a stockholder and director of both Forminière and Diamang.

13. Albert E. Thiele, a resident of Scarsdale, New York is made a defendant. He is a stockholder and director of both Forminiere and Diamang.

14. Solomon R. Guggenheim, a resident of Port Washington, Long Island, New York, is made a defendant. He
24 is now and since before 1923 has been a stockholder in Forminiere and Diamang.

15. Clendenin J. Ryan, a resident of Hackettstown, New Jersey, is made a defendant. He is and since before 1923 has been a stockholder of Forminiere and Diamang.

16. George K. Sturm, a resident of Woodbridge, New Jersey, is made a defendant. He is a stockholder and auditor of Forminiere.

17. Herbert H. Vreeland, Albert E. Thiele, Solomon R. Guggenheim, Clendenin J. Ryan and George K. Sturm are the American stockholders of Forminière. They hold stock therein under a voting trust agreement called the Congo Mines Participation Agreement. The interests and voting

rights in Forminiere so held by said individual defendants 25
are substantial, and they acting together with Societe Generale control Forminiere.

18. Lute J. Parkinson, a resident of New York City, is made a defendant. He is now and for many years has been assistant general manager and an agent of De Beers.

19. Russell Johnson Parker, a resident of New York City, is made a defendant. He is now and since before 1925 and 1934, respectively, has been managing director of Consolidated Selection and Sierra Selection.

20. Each of the individual defendants has participated and now participates in the direction and management of 26
the defendant corporations employing him or of which he is an officer or stockholder, and particularly in those corporate affairs, policies, and acts described in this complaint. Each of the individual defendants has authorized, ordered, or done some or all of the acts done by his corporation constituting the offenses hereinafter complained of.

III.

The Trade and Commerce Involved

Importance of Industrial Diamonds. 27

21. The diamond is the hardest known substance and a strategic war and industrial material. Diamonds and boart, a diamantine substance containing impurities, are used in cutting, grinding, and boring hard materials such as metals, stone, etc. They are more effective than other cutting or abrasive materials where speed and precision are required. Being harder, they are used for truing other cutting materials. Particular uses of diamonds include the following: Diamond drills, saws, shaping tools, gear grinders, thread grinders and wire drawing dies are used in making gunsights, bombsights, binoculars, compasses, chronometers, gauges, radio wire, magnetos, dynamos, transformers, electric motors, and pistons and crankshaft

bearings for airplane motors. Diamond tools are used to true the abrasive wheels used in making crankshafts, camshafts, valves and connecting rods, and to true the tungsten carbide tools used in the manufacture of shells.

22. Where hereinafter used, the term diamonds, unless otherwise specified, refers to rough diamonds, including uncut gem diamonds, industrial diamonds and boart.

Sources of Industrial Diamonds and Boart.

23. The diamonds which are used in industry are those diamonds not suitable for use as gems because of impurities and imperfections. Industrial diamonds come from both pipe mines and alluvial deposits and are mined together with gem diamonds from these sources. Industrial diamonds are the residue after the gem stones have been sorted out. The earlier important commercial sources of diamonds were pipe mines; all pipe mines of any importance are located in the Union of South Africa. After 1914, the other commercial source of diamonds, alluvial deposits, were discovered in the Belgian Congo, Portuguese Angola, Gold Coast, and Sierra Leone. There are minor alluvial deposits in other parts of Africa and in South America.

24. Eighty per cent by weight of the world's production of diamonds is used for industrial purposes. Ninety-eight per cent by weight of the Belgian Congo, sixty per cent of the Gold Coast and Sierra Leone, fifty per cent of the South African, and forty per cent of Angola production of diamonds are suitable for industrial uses only.

Ownership and Control of Diamond Deposits.

25. De Beers, directly or through subsidiaries, has acquired and now owns all of the important pipe mines in Africa and thus controls all pipe mines of any importance. De Beers directly or through subsidiaries also has acquired

many less important pipe mines with the sole intent and 31
purpose of closing them down so as to keep their production off the market; upon acquisition operations at these mines were discontinued and have never been renewed.

26. De Beers has also acquired and now controls the principal alluvial diamond mining companies of South Africa. It purchased the stock of Cape Coast Exploration Company, Limited, liquidated the company, and took over its assets. De Beers purchased 41% of the stock of Consolidated Diamond Mines of South West Africa, Limited (hereinafter called Consolidated). Anglo-American Investment Trust, Limited, owns some stock in Consolidated. Ernest Oppenheimer is chairman of the boards of De Beers, 32
Anglo-American, and Consolidated.

27. The Belgian Congo diamond deposits are owned by Beceka and other subsidiaries of Societe Generale. Forminiere mines these deposits under contracts with the owning companies. Diamond deposits in Portuguese Angola are owned and operated by Diamang. Gold Coast, Sierra Leone, and certain other African diamond deposits are owned and mined by Consolidated Selection and its subsidiaries, including Sierra Selection.

28. The defendant corporations and their subsidiaries produce and sell approximately 99% of all the diamonds 33
produced in Africa, and approximately 95% of all the diamonds produced in the world.

Market in the United States.

29. The principal market for industrial as well as gem diamonds is in the United States. In 1942 and 1943 imports of all diamonds and of industrial diamonds into the United States were in excess of the world's production of all diamonds and of industrial diamonds, respectively, in those years. There is a continuous stream of diamonds and boart from Africa to England, and thence to the United States. This stream of shipments is a part of the foreign trade and commerce of the United States.

IV.

The Violations of Law.

30. For many years up to and including the date of the filing of this complaint, defendants have been continuously and now are engaged in a combination and conspiracy to restrain and monopolize trade and commerce of the United States with foreign nations in gem diamonds, industrial diamonds, and boart, and have been and now are parties to contracts, agreements, and understandings in restraint of trade and commerce of the United States with foreign nations, all in violation of Sections 1 and 2 of the Act of
35 Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act. Continuously during said period defendants, some of whom were engaged in importing, have been and now are engaged in a combination and conspiracy in restraint of, and have been and now are parties to contracts and agreements intended to operate in restraint of, lawful trade and free competition in lawful trade and commerce of the United States, and intended to increase the market price in the United States of diamonds, industrial diamonds, and boart imported into the United
36 States, all in violation of Section 73 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 509, as amended, commonly known as the Wilson Tariff Act. Defendants are continuing and threaten to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

31. The aforesaid combination and conspiracy alleged in the next preceding paragraph have consisted of a continuing agreement and concert of action between defendants: (a) to prevent dealers and consumers in the United States from purchasing diamonds from the producers, (b) to prevent all sale or purchase of diamonds for export to or import into the United States except by purchase through Diamond Trading Company and except subject

to terms and conditions set by defendants, (c) to prevent 37
all persons in the United States other than certain favored brokers, dealers, and cutters from purchasing diamonds from the Diamond Trading Company, (d) to limit the production and supply of diamonds, (e) to limit and restrict the quantity of diamonds imported into the United States, and (f) to fix, stabilize, and enhance the prices at which diamonds are sold in the United States.

32. Defendants have formed and carried out the aforesaid combination and conspiracy by the acts, conduct, and agreements in this complaint described and alleged.

33. The defendants have controlled the marketing of 38
diamonds in the United States and in other countries principally by causing substantially all diamonds produced in Africa to be sold through a single selling agency. Until 1934 that selling agency was a group of London merchants known as the Diamond Syndicate and after 1934 and continuing to the present time it has been Diamond Trading Company. The defendants now cause the Diamond Corporation and the South African Producers Association to acquire from substantially all the producers in Africa all diamonds sold by them and to resell the diamonds so acquired to the Diamond Trading Company exclusively. By these means the defendants obstruct and impede the 39
free flow of diamonds to the United States from the producers or purchasers from them, prevent substantially all purchases of diamonds for export to or import into the United States except by purchase through Diamond Trading Company and except in accordance with terms and conditions set by defendants, and monopolize the sale of diamonds exported to or imported into the United States. The aforesaid arrangements which defendants have used to control the sale of diamonds in the United States and other markets have varied from time to time as hereinafter more fully alleged.

34. Prior to 1920 the producers of diamonds in the Union of South Africa and the Mandate of Southwest

40 Africa (who are hereinafter sometimes collectively referred to as the Conference Producers) agreed with each other to monopolize the supply of diamonds to world markets. For this purpose they formed an association known as the Conference and agreed with each other to limit their production and to sell their diamonds exclusively to a single selling agency, a group of London merchants known as the Diamond Syndicate. All important diamond deposits then being worked were owned or controlled by the Conference Producers.

35. Defendants De Beers is now and was for many years prior to 1920 the most important Conference Producer,
41 controlling the great bulk of the diamond deposits in the areas worked by them and exercising a dominant influence in bringing about and maintaining the agreements above referred to. Other Conference Producers include New Jagersfontein and Premier, both now wholly owned by De Beers, and Consolidated Diamond Mines, which De Beers controls and of whose capital stock De Beers owns 41%.

36. The agreements mentioned in paragraph 34 above were maintained in effect until 1930 when they were replaced with further means to control the production and marketing of diamonds sold by the Conference Producers
42 as hereinafter described.

37. After 1920 there were no further discoveries of important diamond deposits in the Union of South Africa and the Mandate of Southwest Africa. In the Belgian Congo, Portuguese Angola, Sierra Leone, and the Gold Coast, however, previously undeveloped alluvial deposits of great importance came into production from time to time between 1920 and 1930. These deposits are especially rich in industrial diamonds and constitute the principal source of the world's supply of industrial diamonds.

38. In order to maintain the control first established by the Conference Producers over the world market for diamonds, including the United States market, which is the largest and most important diamond market, and to main-

tain high prices for diamonds, both gem and industrial, throughout the world, defendants have continuously eliminated all competition between the Conference Producers and the companies who between 1920 and 1930 came into production in Africa outside of the Union of South Africa and the Mandate of Southwest Africa. Among this later group of producers (hereinafter sometimes collectively referred to as the non-Conference Producers), the most important are defendants Beceka, Forminiere, Diamang, Consolidated Selection, and Sierra Selection and its subsidiaries. Beceka owns and Forminiere operates the richest diamond mine in the world; over 90% of its production by weight consists of industrial diamonds. 43 44

39. For the purposes alleged in paragraph 38 above, from time to time as the non-Conference Producers came into production the Conference Producers and the Diamond Syndicate purchased diamonds from them in large quantities, and as each non-Conference Producer became of importance in diamond production defendants have caused it to enter into contracts with the Diamond Syndicate requiring each such producer to sell its diamonds of all kinds exclusively to the Syndicate. Thus the Syndicate contracted to purchase all diamonds of Diamang in 1923, of Consolidated Selection in 1925, and of Forminiere in 1926. Alluvial deposits were discovered in Lichtenburg and Namaqualand, South Africa, in 1926 and 1927. They were rapidly developed and from 1927 to 1930 they produced large quantities of diamonds and were exhausted. The Syndicate acquired a large part of these diamonds. The aforesaid exclusive purchase contracts between the Diamond Syndicate and Diamang, Forminiere, and Consolidated Selection, as well as such contracts made by the Syndicate with the other non-Conference Producers, were extended and renewed and maintained continously in effect and carried out until 1930 when they were replaced as hereinafter described. 45

40. The Diamond Syndicate and the Conference Producers kept off the market most of the diamonds purchased

46 by them as above described and thus accumulated large stocks which the Diamond Syndicate marketed only from time to time and in a manner designed to maintain high prices for diamonds throughout the world.

41. The depression which began in 1929 made it difficult for the Syndicate to finance the extensive purchase agreements above-mentioned and the carrying of the large stocks of diamonds accumulated and held off the market as aforesaid. In order to relieve the Syndicate and avoid an uncontrolled market, the Conference Producers purchased one-half of the Syndicate's stocks on hand as of July 1, 1929.

47

42. Thereafter, further to assist in financing the aforesaid purchases of diamonds and the carrying of stocks thereof, and to reduce the participation of the Diamond Syndicate in defendants' system of control of the production and marketing of diamonds, defendants in 1930 formed the Diamond Corporation and caused to it to take over from the Conference Producers their aforesaid stocks of diamonds and caused it also to take over from the Diamond Syndicate the latter's aforesaid exclusive purchase contracts, referred to in paragraphs 34 and 39, respectively, with each of the Conference Producers and non-Conference Producers. De Beers and Consolidated Diamond Mines
48 acquired and now own 80% and 20%, respectively, of the stock of Diamond Corporation.

43. From 1930 to about 1933 defendants caused Diamond Corporation to maintain exclusive selling agreements with the Diamond Syndicate and accordingly Diamond Corporation during this period sold its diamonds, which included all diamonds sold by both the Conference Producers and the non-Conference Producers and such amounts as have been marketed from time to time out of the aforesaid accumulated stocks taken over by Diamond Corporation, exclusively to the Diamond Syndicate.

44. In or about 1933 defendants modified their system of control by forming the South African Producers Associa-

tion, Limited (hereinafter called the Producers Association) and by causing all of the Conference Producers to terminate their contracts with Diamond Corporation and to become members of the Producers Association and to enter into contracts with it by which they agreed to sell their diamonds exclusively to it. Diamond Corporation continued its contractual arrangements with the non-Conference Producers whereby they sold their diamonds exclusively to it. Diamond Corporation, however, became a member of the Producers Association and entered into contracts with it by which Diamond Corporation agreed to sell its diamonds exclusively to the Producers Association. The Producers Association which thus acquired the diamonds of all the companies contracted to sell the diamonds so acquired by it exclusively to the Diamond Syndicate. 49 50

45. In or about 1934 defendants completed the concentration of marketing control in their own hands and eliminated the Diamond Syndicate from its previous share in control. For this purpose and to carry out more effectively the purposes hereinbefore alleged defendants formed Diamond Trading Company (of whose capital stock De Beers and Diamond Corporation each took 50%) and caused it to take over from the Diamond Syndicate the latter's exclusive purchase contracts with the Producers Association. Thereby Diamond Trading Company replaced the Diamond Syndicate as the exclusive selling agency for all diamonds produced by the Conference Producers and the non-Conference Producers. Diamond Trading Company renewed and maintained in effect such exclusive purchase contracts with the Producers Association continuously until the present time, with the revision as to industrial diamonds in 1943 as hereinafter described. 51

46. Under the contracts mentioned in the last preceding paragraph, Diamond Trading Company and the Producers Association have agreed from time to time upon the quantities of diamonds that the former buys from the latter. In turn the agreements between the Producers Association and its members, including Diamond Corporation, provide

that the members sell to the Association in such amounts as to replace the diamonds disposed of to world markets by Diamond Trading Company. The members of the Producers Association have from time to time agreed among themselves upon individual quotas to be sold to it by the respective members in filling the total amounts to be sold by it to Diamond Trading Company. Diamond Corporation, in filling its individual quota of sales to the Producers Association, has agreed from time to time with each of the non-Conference Producers upon the individual quotas to be sold by each of them to Diamond Corporation. By these quota restrictions defendants have limited both the production and the marketing of both gem and industrial diamonds by Conference Producers and by non-Conference Producers.

47. In 1943 defendants modified the aforesaid selling agreements to change the course of sale of industrial diamonds. Diamond Corporation no longer sells to the Producers Association the industrial diamonds which Diamond Corporation acquires from the non-Conference Producers but instead purchases from the Producers Association all industrial diamonds which the Producers Association purchases from Conference Producers, and Diamond Corporation now sells industrial diamonds so acquired from both Conference Producers and non-Conference Producers directly to the Diamond Trading Company. The Producers Association continues to sell to Diamond Trading Company all gem diamonds of the Conference Producers and non-Conference Producers in accordance with the agreement alleged in paragraph 45.

48. As a result of the revision of the aforesaid selling agreements the individual quotas allocated to each producer apply only to their sales of gem diamonds, but the quota limitations upon the amount of gem diamonds to be sold by each producer has nevertheless continued to limit the production of industrial diamonds and boart. Gem diamonds are mined in no greater amount than are to be sold under the selling agreements and industrial diamonds and boart are not mined separately from gem diamonds but only

coincidentally therewith since gem diamonds, industrial diamonds and boart are scattered through the same ore. For 1943 the agreed percentage sales quotas for gem diamonds allocated to the members of the Producers Association were: 20% for Diamond Corporation, 47% for De Beers, 17.5% for Consolidated Diamond Mines, and 15.5% for the Union of South Africa. Premiere and New Jagersfontein were not operating, and their quotas were assigned to Diamond Corporation. 55

49. In consequence of the arrangements aforesaid, Diamond Trading Company now controls the purchase and resale of all diamonds of all kinds mined by the Conference Producers and non-Conference Producers and is the sole selling agency for 99% of all diamonds produced in Africa and 95% of all diamonds produced throughout the world. 56

50. De Beers and its subsidiaries have further limited the world's supply of diamonds and enhanced their price throughout the world by shutting down all mines owned and controlled by De Beers and its subsidiaries. Since 1939 sales of diamonds by defendants have been far in excess of the world's production of diamonds. The excess has been met out of large stocks accumulated by defendants as hereinbefore described and held by them in 1939. Since that date they have greatly increased their sales especially of industrial diamonds and have systematically decreased their production of diamonds of all types. 57

51. The monopoly power acquired as aforesaid and exercised by the defendants through Diamond Trading Company has been asserted in arbitrary and unfair treatment of prospective purchasers and customers and by enhancement of diamond prices in the United States to arbitrary and exorbitant levels. These effects have been brought about through additional means of regulating the marketing of diamonds and strict control over sales by Diamond Trading Company to dealers as hereinafter described.

58 52. Diamond Trading Company sells gem diamonds only on four occasions during each year, only in London, and only at so-called "sights", to which only a few selected dealers are admitted. Furthermore gem diamonds at such sights are sold only in series or lots selected by Diamond Trading Company. Each series or lot contains a wide range of different sizes and qualities, representing more or less a cross-section of the gem diamonds that the company has in stock, arbitrarily chosen by Diamond Trading Company. Dealers can buy at the sights only these selections. The dealers selected for admission to sights are permitted to attend them only on condition that they purchase a minimum of £20,000 of diamonds at each sight
59 which they attend. Diamond Trading Company disciplines dealers who fail to make the required purchases. They are refused admission to subsequent sights and thus are denied opportunity further to engage in purchase of gem diamonds. All purchases are required to be paid for in advance.

53. Diamond Trading Company sells industrial diamonds in various ways. It sells in industrial series at sights in London. It sells boart and some kinds of industrial diamonds by classes apart from the series. It sometimes sells direct to purchasers in the United States and other countries on order by direct mail or cable or through
60 brokers.

54. As in the sale of gem diamonds, purchasers of industrial diamonds are required by Diamond Trading Company to pay in advance, before delivery, at the time the goods are ordered. Purchasers who have ordered by mail or cable are not permitted to inspect shipments before accepting delivery, or to refuse to accept shipments or to return them after inspection. Diamond Trading Company requires purchasers to buy unseen, and without warranty or representation, the industrial diamonds or boart shipped, and, having been paid, Diamond Trading Company will not take back the goods or make any adjustment. Diamond Trading Company has included in shipments of material sold as industrial diamonds material which cannot be used

for the desired industrial purposes or for any purposes at all. Purchasers have no recourse and have no other source from which to buy. Purchasers are frequently prevented from buying the type of industrial diamonds needed for their or their customers' industrial operations and are permitted to buy only in series selected arbitrarily by Diamond Trading Company. 61

55. In maintaining the above-described system of complete control of diamond production and marketing, Diamond Trading Company has systematically prevented the accumulation in this country of a stockpile of industrial diamonds. Diamond Trading Company has persistently refused to sell industrial diamonds for stockpiling purposes to agencies of the United States seeking to establish such stockpiles for military reasons. In sales of industrial diamonds to manufacturers and dealers in the United States Diamond Trading Company has systematically prevented purchases by such companies in amounts that would establish for them more than a few months' supply on hand. When it was feared that German arms might invade England and overrun Africa, the Board of Economic Warfare sought to purchase large quantities of industrial diamonds from the defendants to prevent capture of their existing stocks and to create a stockpile here. The Board succeeded only in obtaining an agreement to establish a stockpile in Canada in the possession of defendants, by the terms of which agreement this stockpile in Canada could be drawn upon for sale and use in the United States only as stocks in this country fell below 90% of what they were on June 30, 1942, and then only when such stocks should not be restored to that level by defendant corporations after 60 days' notice. 62 63

56. Diamond Trading Company has increased prices of industrial diamonds during the war by gradually depreciating the quality of industrial series and of most grades and classes of industrial diamonds without reducing prices.

57. The restraints upon production and marketing of diamonds as herein set forth are maintained by defendants

64 for the primary purpose of maintaining diamond prices sold in, or for export to or import into, the United States, where the purchase and use of diamonds is larger than in any other country in the world. That purpose is furthered by numerous acts done or procured to be done in this country by defendants, including those hereinbelow described, and defendants have put the aforesaid conspiracy into operation, made it effective, and carried it out within the United States in the following ways:

(a) De Beers and its subsidiaries have conducted and now carry on an advertising, publicity, and
65 public relations campaign in the United States through its agent, N. W. Ayer & Son, Inc. One object of this campaign is to induce the consuming public in the United States to believe that diamonds are naturally rare and valuable, and that they are inherently worth the retail prices quoted in the advertisements, prices which are several times those which would prevail under competitive conditions. Another object of the campaign and another function of N. W. Ayer & Son, Inc., is to discourage, eliminate and counteract publicity unfavorable to or critical of De Beers and its subsidiaries. At the direction of De Beers, N. W. Ayer & Son, Inc. has induced pub-
66 lishers of magazines not to run articles which in its view would create publicity unfavorable to De Beers and its subsidiaries.

(b) N. W. Ayer & Son, Inc. under the direction of De Beers, regularly and continuously performs many services in the United States for De Beers and its subsidiaries. It investigates retail prices by using shoppers. It has reported on United States Government price regulations for diamonds. It reports complaints made by customers of the Diamond Trading Company. It has reported on the numbers, wages, hours, and union membership of diamond cutters in New York and Philadelphia. Its agents

travel over the United States in the interest of the public relations and publicity campaign. 67

(c) De Beers and its subsidiaries regularly and continuously have sent and now send representatives to the United States to investigate and report on market conditions, to arrange for and supervise advertising, publicity, and public relations work and to investigate complaints, most of which have been made because of defendants' monopolistic practices and the resulting high prices, depreciated quality, limited supply, or exclusion of dealers or other purchasers from the trade.

(d) Diamond Trading Company requests and obtains reports on the credit of American customers from its agent in New York, Banque Diamantaire Anversoise S. A. It also ships packages of diamonds to this bank for delivery to particular customers in the United States. 68

(e) De Beers and its subsidiaries have had and now have diamonds in the United States. Some of these, while they were in the United States, were sold to the United States Government by a representative of De Beers and its subsidiaries who was in the United States. 69

(f) As alleged in paragraph 2 and in paragraphs 12 through 20 above, directors and stockholders of two of the corporate defendants and a managing director, and assistant manager, and agents of some of them reside in this country and are here active in the conduct of the affairs of their respective corporations in effectuation of the aforesaid combination and conspiracy.

(g) Forminiere and Diamang regularly and continuously have purchased and are purchasing machinery, tools, and supplies in the United States for use in their mining operations in Africa. Forminiere

70 is continuously represented by an agent in this country for that purpose.

(h) De Beers and its subsidiaries and Forminiere and Diamang regularly and continuously have maintained and now maintain bank accounts in banks in New York which they use in paying for advertising, publicity, public relations work, and purchases of machinery, tools, and supplies.

(i) Diamond Trading Company, De Beers, its subsidiaries, and other defendants regularly and continuously have used and now use the United States
71 mails for the successful maintenance of their marketing control and the resulting high price level for diamonds to correspond with purchasers in the United States, to ship diamonds to customers in the United States, and to correspond with their advertising, publicity, and public relations agency in the United States, and to carry out the other activities described in this paragraph 57.

(j) De Beers and its subsidiaries have suggested, tampered with, fixed, and maintained, and are suggesting, tampering with, fixing, and maintaining, the United States retail prices of gem diamonds by
72 advertising in the United States the maximum and minimum retail prices for gem diamonds of different weights, thus causing the public to suspect the quality or genuineness of diamonds offered for sale at retail below these prices.

V.

Effects of the Violations of Law

58. Defendants have restrained the trade and commerce of the United States by the aforesaid combination and conspiracy and the contracts, agreements, arrangements, and practices hereinabove described. The said con-

spiracy has had the following effects, among others, within 73
the United States:

(a) Through the aforesaid quota arrangements and exclusive sales arrangements the production of diamonds for sale to the United States markets is restricted and limited.

(b) Through Diamond Trading Company, Diamond Corporation, and the Producers Association monopolistic and exorbitant prices are maintained on all diamonds sold to the United States market. For example, sand boart, which Diamond Corporation buys from Forminiere for two shillings a carat, is resold by Diamond Trading Company to dealers 74
in the United States at seven shillings six pence, which is three and a half times the price paid. The passage of industrial diamonds through the hands of Diamond Corporation and Diamond Trading Company costs the United States Government and manufacturers of war goods in the United States many millions of dollars annually. Of De Beers outstanding stock, 38% is cumulative preferred stock with a cumulative preferred annual dividend of 40%, which has been regularly paid. De Beers' net profits were 44% in 1939, 60% in 1940 and 114% in 1943.

(c) Through exclusive sales arrangements all 75
purchasers for import into or export to the United States and dealers and consumers in the United States are prevented from purchasing diamonds from the producers thereof and are compelled to purchase only diamonds sold by Diamond Trading Company under the terms and conditions of sale established and maintained by defendants through Diamond Trading Company.

(d) Agencies of the United States Government have been prevented from obtaining industrial diamonds and boart and establishing a stockpile in the United States, which they desired for military reasons.

76 (e) Dealers in industrial diamonds and boart in the United States have been and are being dealt with oppressively by Diamond Trading Company by its practice of requiring them to pay for and take industrial diamonds and boart ordered by mail and cable which they have not had an opportunity of examining or inspecting, and as to which they have no recourse although the material is in many cases worthless or selected by Diamond Trading Company arbitrarily in series unfitted to the purchaser's needs. They have also been oppressed by Diamond Trading Company's practice of reducing the quality of the 77 several grades and classes of industrial diamonds and boart sold.

(f) Individuals and firms in the United States other than certain favored brokers, dealers, and cutters have been and are prevented from purchasing diamonds from the Diamond Trading Company.

VI.

Prayer

Wherefore, the plaintiff prays:

78 (1) That the Court adjudge and decree that the defendants have combined and conspired to restrain and monopolize, and have agreed and contracted to restrain, foreign trade and commerce of the United States in violation of Sections 1 and 2 of the Sherman Antitrust Act, and that defendants, some of whom were engaged in importing, have been engaged in a combination and conspiracy and have been parties to agreements and contracts intended to operate in restraint of lawful trade and free competition in lawful trade and commerce of the United States and intended to increase the market price in the United States of gem diamonds, industrial diamonds, and boart imported into the United States, all in violation of Section 73 of the Wilson Tariff Act.

(2) That defendants and each of them and their successors, officers, directors, agents, representatives, and all persons and corporations acting on their behalf be perpetually enjoined from combining, conspiring, agreeing, or contracting to restrain or monopolize trade and commerce of the United States with foreign nations in gem diamonds, industrial diamonds, and boart, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings having the purpose or effect of continuing, reviving, or renewing any of the aforesaid violations of the Sherman Antitrust Act and the Wilson Tariff Act. 79

(3) That defendants, their subsidiaries, successors, stockholders, officers, directors, agents, representatives, and all persons and corporations acting on their behalf be perpetually enjoined from carrying out any existing contracts, agreements, understandings, or arrangements insofar as any such contracts, agreements, understandings, or arrangements shall prohibit or prevent sales by them, or any of them, for import into, or for resale for import into, the United States. 80

(4) That each defendant be enjoined from practicing in concert with any other defendant any policy or from entering into any agreement with any other defendant having the purpose or effect of limiting or restricting import of diamonds into the United States or of enhancing, fixing, stabilizing, or influencing the prices at which diamonds are sold in the United States. 81

(5) That, in order to prevent the withdrawal, transfer or dissipation of assets in the United States until such time as this Court shall have determined the issues in this case and defendant corporations shall have complied with its orders, the corporate defendants be restrained and enjoined from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring, or otherwise disposing of property in the United States.

82 (6) That the plaintiff have such other, further, and different relief as the nature of the case may require and the court may deem just and proper.

(7) That pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring such of the defendants as are not within this district to be brought before the court in this proceeding as parties defendant and directing the marshal of the district in which they severally reside to serve summons upon them.

s/ FRANCIS BIDDLE
Attorney General.

s/ HERBERT A. BERMAN
PATRICK A. GIBSON

83

s/ WENDELL BERGE
Assistant Attorney General.

s/ EDWARD F. STIMSON
Special Assistants to the
Attorney General.

JOHN F. X. McGOHEY
United States Attorney
Southern District of New York.

s/ LAWRENCE S. APSEY
Special Assistant to the
Attorney General.

(Verification, oath and seal omitted.)

84

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

APPLICATION FOR TEMPORARY RESTRAINING ORDER—
Filed January 29, 1945.

The United States of America, plaintiff, upon the facts shown by the verified complaint and by the affidavits of Edward S. Stimson filed herewith, moves the Court for a temporary restraining order without notice restraining the above named foreign corporate defendants, Societe Internationale Forestiere et Miniere du Congo, Companhia de

Diamantes de Angola, Societe Minere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd. and Sierra Leone Selection Trust, Ltd., from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States pending the issuance of a preliminary injunction for the same purpose with the object of preventing the withdrawal, transfer or dissipation of assets in the United States until such time as this Court shall have determined the issues in this case and defendant corporations shall have complied with its orders. 85 86

Plaintiff moves the Court for the aforesaid temporary restraining order without notice because without it the aforesaid corporate defendants could withdraw deposits from banks in the United States and diamonds from safe deposit boxes in the United States, and dispose of other property in the United States before a hearing could be had and a temporary injunction issue, and should these withdrawals occur this Court would be powerless to enforce any order or decree against these foreign corporate defendants and the United States of America would suffer irreparable injury. 87

/s/ Herbert A. Berman

/s/ Patrick A. Gibson

/s/ Edward S. Stimson

Special Assistants to the Attorney General, Attorneys for the Plaintiff.

88 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

TEMPORARY RESTRAINING ORDER—Filed January 29, 1945.

This 29 day of January, 1945, there came on for hearing the application of the United States of America for a temporary restraining order without notice, and it clearly appearing from specific facts shown by the verified complaint herein and by the affidavits of Edward S. Stimson that immediate and irreparable injury may result to the United States of America before notice can be served and
89 a hearing had upon said motion, in that the corporate defendants could quickly withdraw their assets from the United States and thus prevent enforcement of any order or decree which this Court may render because, although they do business in the United States, their principal properties are in foreign countries and their principal business is carried on there; and it further appearing that this order should be granted without notice because notice would give the foreign corporate defendants an opportunity to remove bank deposits, diamonds and other property from the United States, leaving the Court with a right to punish for contempt but with no means of carrying out such a
90 disciplinary measure or of enforcing a decree or order against said foreign corporate defendants, it is now

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order, be restrained from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and

from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States, and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further 91

ORDERED that this restraining order shall expire upon the decision of plaintiff's motion for a preliminary injunction or ten days from the date and hour of its issuance as hereinafter endorsed hereon, whichever is sooner, unless extended or dissolved by further order; and it is further

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 2nd day of February, 1945 at 10:30 o'clock A. M. in Room 506 of this Court House; and it is further 92

ORDERED that service upon the corporate defendants on or before 6 P. M. of the 30th day of January, 1945, of notice that plaintiff's motion for a preliminary injunction will be heard at the aforesaid time shall be deemed a timely notice; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered of record.

Issued at New York, New York, on this 29th day of January, 1945, at 11:18 o'clock A. M. 93

/s/ VINCENT L. LEIBELL,
United States District Judge.

94 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF EDWARD S. STIMSON—January 29, 1945.

STATE OF NEW YORK,
COUNTY OF NEW YORK,

EDWARD S. STIMSON, being first duly sworn, says that he is a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C., that he has made the investigation and
95 prepared the complaint in the above entitled cause and there is a great danger that the Court will be unable to enforce its orders, that its jurisdiction will be defeated and that irreparable injury will result to the United States of America unless a temporary restraining order without notice issues enjoining the foreign corporate defendants, Societe Internationale Forestiere de Minere du Congo, Companhia de Diamantes de Angola, Societe Minere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., from
96 withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States.

If said property is withdrawn or transferred as aforesaid the injury will be irreparable because sequestration of said property is the only means which this Court has of enforcing any order to decree which it may render against said foreign corporate defendants. The principal business and activities of said defendants are carried on in foreign countries and they could quickly withdraw their assets from the United States and so prevent enforcement of any order or decree which the Court may render. In

this way the jurisdiction which this Court has obtained over 97
these defendants would be fruitless because the means of enforcing the final decree would have been removed.

The temporary restraining order should be granted without notice because notice would give defendant foreign corporations an opportunity to remove bank deposits, diamonds and other property from the United States leaving the Court with a possible right to punish for contempt but with no means of carrying out such a disciplinary measure or of enforcing a decree or order against said foreign defendants.

No previous application for similar relief has been made. 98

/s/ EDWARD S. STIMSON

EDWARD S. STIMSON

(Oath and Seal Omitted)

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF EDWARD S. STIMSON—January 29, 1945. 99

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EDWARD S. STIMSON, being first duly sworn, says that the investigation which he has made shows the foreign corporate defendants named herein have endeavored to avoid subjecting themselves to the jurisdiction of the courts of the United States by making their sales abroad only and requiring customers to pay in advance for all purchases.

/s/ EDWARD S. STIMSON

(Oath and Seal Omitted.)

100 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

MOTION FOR PRELIMINARY INJUNCTION—
Filed January 29, 1945.

The United States of America, plaintiff, moves the Court for a preliminary injunction restraining the above named foreign corporate defendants, namely Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de
101 Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States until such time as this Court shall have determined the issues of this case and defendant corporations shall have complied with its orders.

The injury to the United States of America from the
102 withdrawal of said deposits, diamonds or other property would be irreparable because sequestration of said property is the only means of enforcing this Court's orders or decree against said foreign corporate defendants. The principal business of said defendants is carried on in foreign countries and they could quickly withdraw their assets from the United States and so prevent enforcement of any order or decree which this Court may render.

/s/ HERBERT A. BERMAN

/s/ PATRICK A. GIBSON

/s/ EDWARD S. STIMSON

Special Assistants to the Attorney General
Attorneys for Plaintiff.

In United States District Court. 103

[Title Omitted.]

Modification of Temporary Restraining Order—
Filed January 31, 1945.

This 31st day of January, 1945 the United States of America by its attorney Edward S. Stimson, applied for a modification of the temporary restraining order heretofore granted in this cause on the 29th day of January, 1945, the modification being for the purpose of releasing property on board the ship S. S. Talisman of the Barber Lines, Inc. and on the dock for loading therein belonging to or 104
for shipment to Societe Internationale Forestiere et Miniere du Congo (Forminiere) or Societe Miniere du Beceka (Beceka) and to be used in the mining of diamonds and tin in the Belgian Congo. It is estimated that the value of this property is $14,650 and that $5,000 of the purchase price is yet unpaid and that an additional $2,000 will be required to cover handling, freight and other charges. It is therefore

Ordered that the temporary restraining order heretofore granted in this cause on January 29, 1945 be and the same is modified to permit the removal from the United States of the aforesaid property of Forminiere or Beceka 105
in the S. S. Talisman and on the docks for loading therein and to permit the forwarding to Forminiere or Beceka of the shipping papers relating thereto and that Forminiere or S. H. Ball be permitted to withdraw $7,000 from the account at the Chase National Bank in the name of S. H. Ball, Consulting Geologist, Forminiere for the purpose of completing payment for the aforesaid property and the handling, freight and other charges thereon.

Issued at New York, New York, on this 31st day of January 1945, at 10:15 o'clock A. M.

[Sgd] Vincent L. Leibell
United States District Judge.

106 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

MODIFICATION OF TEMPORARY RESTRAINING ORDER—
Filed January 31, 1945.

This 31st day of January 1945 the United States of America by its attorney Edward S. Stimson, applied for a modification of the temporary restraining order heretofore granted in this cause on the 29th day of January, 1945, the modification being for the purpose of making it clear that
107 the order does not apply to the funds of persons having notice of the order but only to the funds of the corporate defendants. It is therefore

ORDERED that the temporary restraining order heretofore granted in this cause on January 29, 1945 be and the same is hereby modified by adding the words "belonging to defendants" after the word "money" in line 9, and after the word "property" in lines 10 and 12, all of the first full paragraph on page 2 of said temporary restraining order.

Issued at New York, New York, on this 31st day of January 1945, at 10:15 o'clock A. M.

108 (sgd) VINCENT L. LEIBELL,
United States District Judge.

IN UNITED STATES DISTRICT COURT. 109

[TITLE OMITTED.]

ORDER EXTENDING AND AMENDING TEMPORARY RESTRAINING ORDER—Filed Feburay 6, 1945.

On the second day of February, 1945, at 10:30 o'clock A. M., the motion of the United States of America for a preliminary injunction came on for hearing and Robert T. Swaine, John Wood and James B. Alley made statements as officers of the court as set out in the attached affidavit of Edward S. Stimson and it appearing that there is good cause for postponing the hearing of the motion of the 110
United States for preliminary injunction in that time is needed to communicate with the officers of the foreign corporate defendants, said officers being abroad, and time will be needed by any attorneys whom they may authorize to act for them to prepare for argument of the motion; it is therefore

ORDERED that the temporary restraining order heretofore granted on January 29, 1945 as modified by the two orders signed and filed on January 31, 1945 be amended to read as stated in subsequent paragraphs and as amended be extended to 12 o'clock midnight, February 16, 1945, or to the entry of the order on plaintiff's motion for a preliminary 111
injunction, whichever is sooner, and that the amended and extended order read as follows:

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order be restrained from withdrawing money belonging to the corporate defendants from banks in the United

112 States and from withdrawing diamonds or other property belonging to the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States, and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further

ORDERED that this temporary restraining order shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the
113 United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor shall this order apply to diamonds so purchased after January 29, 1945; and this temporary restraining order shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 for the purpose of paying for mining machinery equipment and supplies purchased for shipment abroad, and for expenses incident thereto, nor to the aforesaid
114 mining machinery equipment and supplies purchased with said funds. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants and any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 for payment or transfer to any person other than the defendants, may assume in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer; and it is further

ORDERED that this restraining order shall be and remain subject to the provisions of the two modifying orders signed and filed on January 31, 1945; and it is further

ORDERED that this restraining order shall expire at 12 Midnight on February 16, 1945 or on the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of the court; and it is further 115

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 13th day of February 1945 at 10:30 o'clock A. M.; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 6th day of February 1945 at 10:20 o'clock A. M. 116

/s/ VINCENT L. LEIBELL
United States District Judge

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF EDWARD S. STIMSON—February 5, 1945.

EDWARD S. STIMSON, being first duly sworn, deposes and says that he is a Special Assistant to the Attorney General with headquarters in Washington, D. C, and that at 10:30 o'clock on February 2, 1945 he was present in Judge Vincent L. Leibell's courtroom, Room 506, United States Court House, Foley Square, New York, when the motion of the United States for a preliminary injunction in the above-entitled cause which was noted for hearing at that time was called, and that he heard what took place there, which was as follows: 117

That Herbert A. Berman, Special Assistant to the Attorney General, Washington, D. C., Attorney for the United States of America in the above-entitled cause, answered that the United States was ready to argue for the motion; that Robert T. Swaine of Cravath, Swaine & Moore said that he wished to make a statement as an officer of the court, that he was not authorized to appear for any of

118 the defendants, that he had a cable from South Africa, that he could not say on the basis of this cable that he was authorized to represent De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd. that he would probably get instructions and that he needed time to communicate further with South Africa, and that if he were authorized to represent the three corporations he needed time to become acquainted with the case and prepare for argument; that John Wood of Root, Clark, Buckner & Ballantine stated, as an officer of the court that he was not appearing on behalf of any party but that he had been consulted by certain of the
119 individual defendants on whom process had been served as alleged representatives of foreign corporations, that he believed such individual defendants had no authority to retain counsel to represent any of the foreign corporations or to authorize any action on their behalf and that time was needed to communicate to such foreign corporate defendants the facts as to the institution of this action; that James B. Alley, as an officer of the court, stated that he had been consulted by and was representing an individual and a corporation which had been served as alleged agents of Societe Generale de Belgique, that he thought Societe Generale de Belgique was not doing business in this country, that time was needed to communicate with Societe
120 Generale de Belgique in order to ascertain the facts and to prepare for argument.

That Judge Vincent L. Leibell said that it appeared that there was not sufficient time for the foreign corporate defendants to employ counsel and for their counsel to prepare for argument of the motion, that good cause had been shown for postponing the argument on the plaintiff's motion for a preliminary injunction and asked counsel to prepare an order postponing the hearing on the motion for a preliminary injunction to February 13 and extending the temporary restraining order to February 16.

S/ EDWARD S. STIMSON

(Oath and Seal Omitted)

In United States District Court. 121

[Title Omitted.]

Order Continuing Amended Temporary Restraining Order—Filed February 14, 1945.

On the 13th day of February, 1945, at 10:30 o'clock A. M., the motion of the United States of America for a preliminary injunction came on for a hearing and on the application of Edward S. Stimson that the hearing on said motion be postponed until February 23, 1945 at 10:30 A. M., and that the temporary restraining order heretofore granted in this 122
cause be extended to February 26, 1945 at 12 midnight, as set out in the attached affidavit of Edward S. Stimson, and it appearing from said affidavit that there is good cause for postponing the hearing of the motion of the United States for a preliminary injunction in that time is needed to communicate with and receive instructions from the officers of the foreign corporate defendants who are abroad; it is therefore

Ordered, that the amended temporary restraining order issued on February 6, 1945 be extended to 12 o'clock midnight February 26, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever 123
is sooner, unless extended or dissolved by further order of this Court; and it is further

Ordered, that plaintiff's motion for a preliminary injunction be set down for hearing on the 23rd day of February, 1945, at 10:30 o'clock A. M.; and it is further

Ordered, that this order be filed forthwith in the office of the Clerk of this Court and entered of record.

Issued at New York, New York, on this 14th day of February, 1945, at 3:15 o'clock P. M.

/s/ Edward A. Conger
U. S. District Judge

124 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF EDWARD S. STIMSON—February 14, 1945.

EDWARD S. STIMSON, being first duly sworn, says that he is a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C.; that he has conferred with counsel for all of the foreign corporations, that they asked for a postponement of the time for arguing the motion for a preliminary injunction because they needed more time to communicate
125 with and receive instructions from the officers of the foreign corporate defendants who are abroad, that he stated to said counsel that the Government was willing to postpone the time for argument of the preliminary injunction 10 days, provided the temporary restraining order also be extended for the same length of time; that counsel for defendant corporations stated that they had no objection to such an extention of the temporary restraining order; that he was present in Room 506 of the Federal Court House when the plaintiff's motion for a preliminary injunction came on for a hearing before Judge Conger, and that he stated that the hearing of plaintiff's motion was postponed until February
126 23, 1945 at 10:30 A. M., and that the temporary restraining order heretofore granted in this cause be extended to February 26, 1945 at 12 midnight, and that he understood the defendants had no objection; and that counsel for the defendant corporations were present but did not speak.

/s/ EDWARD S. STIMSON
(Oath and seal omitted)

In United States District Court. 127

[Title Omitted.]

Order Extending Amended Temporary Restraining Order—Filed February 26, 1945.

On the 23rd day of February, 1945, at 10:30 o'clock A. M., the motion of the United States of America for a preliminary injunction came on for hearing and counsel for some of the defendant corporations, appearing specially and without waiving defenses as to jurisdiction, stated that they needed additional time to prepare for argument of the motion and asked for an adjournment and 128
counsel for the United States of America consented thereto, and it appearing that there is good cause for postponing the hearing of the motion of the United States for a preliminary injunction in that counsel for some of the defendant corporations need additional time to prepare for argument, it is

Ordered that the amended temporary restraining order issued on February 6, 1945 and extended to February 26, 1945 by an order entered on the 14th day of February, 1945 to be extended to 12 o'clock midnight, March 8, 1945 or to the entry of the order on plaintiff's motion for a 129
preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this court, and it is further

Ordered that plaintiff's motion for a preliminary injunction be set down for hearing on the 2nd day of March, 1945 at 1:30 P. M., and it is further

Ordered that this order be filed forthwith in the Office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 26th day of February 1945 at 10:30 o'clock A. M.

(Sgd) Samuel Mandelbaum
United States District Judge

130 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF SYDNEY H. BALL—February 28, 1945.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SYDNEY H. BALL, being first duly sworn, deposes and says:

1. I am a mining engineer and geologist and have ac-
131 tively practiced that profession in New York City since 1909. I am a member of the firm of Rogers, Mayer & Ball, with offices at 26 Beaver Street, New York City. My practice has related not only to diamonds, but also to precious and base metals and non-metallic minerals. I am consulting geologist for the defendant Societe Internationale Forestiere et Miniere du Congo (herein called Forminiere).

2. On information and belief: Forminiere is a Belgian Congo corporation of which 54.6% of the stock is owned and held by the Belgian Congo Government. Forminiere and its affiliated companies are engaged in the business of mining diamonds, tin and other metals in the Belgian Congo.
132 The principal corporate office of Forminiere is and has for many years been at Tshikapa in the Belgian Congo. Prior to the invasion of Belgium in 1940 the chief administrative office of Forminiere was located at Brussels, Belgium. About the time of the invasion, the officials of the Company at Brussels moved their offices and later established them at Tshikapa. The Company now seems to be in the process of transferring its chief administrative office back to Brussels.

3. There are two substantial categories of property of Forminiere which are affected by the temporary restraining order hereinbefore entered in this case and which would be affected by the preliminary injunction which the plaintiff seeks. They are (a) certain funds which were transmitted to the United States for use in the purchase of sup-

plies and equipment for the mines, and (b) property and 133
equipment which had been so purchased but not shipped at the time of the entry of the temporary restraining order. The facts as to such funds and purchases are set forth below.

4. Prior to the invasion of Belgium in May 1940, Forminiere made only occasional purchases in the United States and, on information and belief, purchased in Belgium or other countries in Europe the greater part of the machinery, equipment and supplies required in its operations. Since May 1940, due to war conditions, Forminiere has obtained a substantial part of such machinery, equipment and supplies in the United States. The articles purchased include 134
pumps, concentrating machinery, power shovels, steel and iron pipe, steel chutes, wire, wire cloth, roofing sheets, hand shovels, picks, machetes, axes, hatchets, nails, padlocks, motorcycles and the like.

5. The usual procedure in making such purchases is as follows: Forminiere sends to me a list of urgently needed machinery, equipment and supplies. I then obtain quotations and place orders, and also obtain the necessary export licenses and priority ratings from the United States government. After the goods have been manufactured and delivered and the necessary arrangements are completed, the goods are shipped to the Belgian Congo in accordance 135
with Forminiere's directions. The purchase price and all incidental expenses are paid out of an account which I have at The Chase National Bank of the City of New York in the name of "S. H. Ball, Consulting Geologist, Forminiere." The balance in that account is maintained by deposits which are transmitted to this country from abroad, at irregular intervals, by Forminiere.

6. On January 29, 1945, the date of the first temporary restraining order entered in this case, I had approximately $632,000 on deposit in the above-mentioned account with The Chase National Bank. Since January 29, 1945, I have disbursed approximately $7,000 from said account to complete payment for property exported on the *S. S. Talisman*

136 in accordance with the order entered herein on January 31, 1945. This left a balance remaining in said account of approximately $625,000. I have today been advised that the sum of $16,650 has just been deposited in said account, in satisfaction of a personal commitment which I made in connection with said order of January 31.

7. I now have outstanding firm orders for machinery, equipment and supplies aggregating approximately $235,000. Said orders were placed on or before January 29, 1945. On or before said date I had paid or provided for payment of approximately $45,000 on account of said
137 orders. Said orders are placed with about seventy different manufacturers and suppliers throughout the United States. A part of the machinery, equipment and supplies involved therein has to be specially fabricated. The whole of the machinery, equipment and supplies involved therein is in various stages of manufacture, delivery or storage, but no part has yet been exported.

8. On or before January 29, 1945 I had sent out to suppliers in payment for machinery, equipment and supplies checks aggregating approximately $4,500 which had not yet been cleared at the time notice of the temporary restraining order issued in this suit was served on The Chase
138 National Bank of the City of New York. When said checks were subsequently presented for payment, they were dishonored because of said order.

9. Following issuance of the temporary restraining order herein, I was obliged to notify the various suppliers with whom orders had been placed that the funds which I had intended to use for payment were subject to the restraining order, and that such order restrained me from exporting the goods and from making any payment in connection with them, even for freight, storage and the like. I asked the various suppliers to hold any goods which they might have ready for shipment, pending further instructions. Some of the suppliers have advised me that under the circumstances they felt obliged to suspend work on the orders. Other

suppliers have said that unless payment is completed fairly soon, they may be forced to dispose of the goods to others. 139

10. Prior to January 29, 1945 I had received from Forminiere requests for additional machinery, equipment and supplies on which orders had not yet been placed, estimated at approximately $150,000. All work on the placing of these orders has necessarily been suspended.

11. The order of February 6 entered herein, which purports to exempt from the effect of the first temporary restraining order any additional funds which may be sent to this country by corporate defendants after January 29, 1945 for the purpose of buying mining machinery, equipment and supplies and for expenses incident thereto, has not in fact relieved the situation. On or about February 12, 1945 I caused to be transmitted to Forminiere a request that additional funds be made available for the purposes stated. Thus far no additional funds have been made available for such purposes. In fact I have not yet had any response to such request. In this connection, it is significant that wartime conditions and restrictions make it very difficult to arrange for and obtain the transfer of international credit or even to communicate with Forminiere. For example, upon the institution of this action I sent notice thereof by cablegram to Forminiere at its office at Tshikapa, Belgian Congo, and was informed in reply that the matter would have to be dealt with by the officials in Brussels. As direct communication between Brussels and the Belgian Congo is apparently not possible, the message had to be transmitted through English channels and it was not until February 22, 1945 that Forminiere was able to communicate with counsel in the United States. In these circumstances the privilege of having additional money brought to the United States, which the Anti-Trust Division offers, will not effectively solve the problem of continuing the urgently needed purchases. 140 141

12. The machinery, equipment and supplies which I have been and should now be buying for Forminiere are essential to the operations of the properties of Forminiere

142 and its associated companies. In my opinion, the interruption of such purchases will materially reduce production within a period of not more than three months.

[Signed] SYDNEY H. BALL

(Oath and seal omitted.)

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

143

AFFIDAVIT OF GEORGE K. STURM—March 1, 1945.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

GEORGE K. STURM, being first duly sworn, deposes and says:

1. I am Secretary to the "owners" or trustees under the Angola Mines Participation Agreement, an unincorporated association organized under the laws of the State of New York. This association owns 240,936 shares of
144 stock of Companhia de Diamantes de Angola (herein called "Diamang") representing 14.78% of the total shares of stock outstanding.

2. On information and belief: Diamang is engaged in the business of mining and selling diamonds produced in Portuguese West Africa. Beginning in 1941, Diamang has obtained in the United States a substantial part of the machinery, equipment and supplies required for the operation of its mines and for personnel. The articles purchased include steel bars, iron pipe, steel sheets, wire rope, wire cloth, steel screens, roofing sheets, shovels, railway track, saws, trucks, conveyor belting, pumps, motorcycles, and the like.

3. The usual procedure which was followed in making purchases of machinery, equipment and supplies in the United States has been as follows: Diamang sends to this country, addressed in my care, a list of urgently needed machinery, equipment and supplies to be purchased. I then obtain quotations and place orders, and also obtain the necessary export licenses and priority ratings. After the goods have been manufactured and delivered and the necessary arrangements are completed, shipment is made to Portuguese West Africa. The purchase price and all incidental expenses are paid by Diamang out of accounts at The Guaranty Trust Company of New York. The balance in the accounts has been maintained by deposits which were transmitted to this country from abroad, at irregular intervals, by Diamang. 145 146

4. On January 29, 1945, the date of the first temporary restraining order entered in this case, Diamang had approximately $101,000 on deposit with The Guaranty Trust Company of New York. Of this amount, approximately $54,000 was deposited in a cash collateral account for the purpose of covering letters of credit issued for the purchase of equipment and supplies and for freight.

5. Diamang now has outstanding firm orders for machinery, equipment and supplies aggregating approximately $81,000, placed on or before January 29, 1945. On or before said date, Diamang has paid, or provided for payment of, approximately $55,000 on account of said orders. Said orders are placed with about thirty different manufacturers and suppliers throughout the United States. Such machinery and supplies are in various stages of manufacture, delivery or storage. 147

6. Prior to January 29, 1945, there had been received from Diamang, requests for additional machinery, equipment and supplies on which orders have not yet been placed, estimated at approximately $45,000. All work on the placing of these orders has necessarily been suspended.

148 7. The machinery, equipment and supplies which Diamang has been and should now be buying in the United States are urgently needed for carrying on its mining operations in Portuguese West Africa.

(sgd.) GEORGE K. STURM

(Oath and seal omitted.)

IN UNITED STATES DISTRICT COURT.

149 [TITLE OMITTED.]

AFFIDAVIT OF JOHN E. F. WOOD—March 2, 1945.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JOHN E. F. WOOD, being duly sworn, deposes and says:

1. I am a member of the firm of Root, Clark, Buckner & Ballantine, attorneys for the defendants Societe Minjère du Beceka (hereinafter called "Beceka"), Societe Internationale Forestiere et Miniere du Congo (hereinafter
150 called "Forminiere"), and Companhia de Diamantes de Angola (hereinafter called "Diamang"). This affidavit is made in connection with the opposition to the plaintiff's motion on January 29, 1945, for a preliminary injunction.

2. The defendants Beceka, Forminiere and Diamang intend to assert some or all of the defenses enumerated in Rule 12(b) of the Rules of Civil Procedure either by motion or in the answer. Because of the difficulties of communication with the offices of said defendants it has been impossible to prepare for the presentation of such defenses as yet. Indeed, Beceka and Forminiere were not able to appoint counsel in this country until February 22, 1945, and Diamang had been able to do so only a few days prior thereto.

3. The opposition to the plaintiff's motion for pre- 151
liminary injunction is therefore made with the reservation of all grounds of defense to the action and without waiving any such defenses.

JOHN E. F. WOOD

(Oath and Seal Omitted.)

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.] 152

ORDER AMENDING AND EXTENDING TEMPORARY RESTRAINING ORDER—Filed March 7, 1945.

On the 2nd day of March 1945 at 1:30 o'clock P. M. the motion of the United States of America for a preliminary injunction came on for hearing and was argued by counsel for the Government and counsel for some of the corporate defendants, appearing specially and without waiving jurisdiction, and the court reserved decision on the motion for a preliminary injunction and ordered that the temporary restraining order be extended; counsel for De Beers Con- 153
solidated Mines, Ltd. asked that the temporary restraining order be modified to permit the continuance of the advertising and publicity campaign and public relations work being carried on in the United States for De Beers Consolidated Mines, Ltd., and counsel for the United States consented thereto and on March 6, 1945 counsel for Societe Forestiere et Miniere du Congo advised counsel for United States that the exception in the previous order did not permit banks to receive funds from abroad after January 29, 1945 from a corporate defendant for deposit to the credit of corporate defendant and thus Societe Forestiere et Miniere du Congo could not deposit funds in its account at The Chase National Bank for use in paying for purchases of machinery equipment and supplies and counsel for the

United States consented to change the order to permit such deposits and payments; it is therefore

ORDERED that the amended temporary restraining order issued on February 6, 1945 and extended by subsequent orders be amended to read as stated in subsequent paragraphs and as amended be and the same is hereby extended to 12 o'clock midnight, March 18, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, and that the amended and extended order reads as follows:

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd. and Sierra Leone Selection Trust Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order be restrained from withdrawing money belonging to the corporate defendants from banks in the United States and from withdrawing diamonds or other property belonging to the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States; and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further

ORDERED that this temporary restraining order shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor

shall this order apply to diamonds so purchased after January 29, 1945; and this temporary restraining order shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 nor to mining machinery equipment and supplies purchased for shipment abroad, or expenses incident thereto, paid for out of any of said funds sent from outside the United States after January 29, 1945. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants at any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 may assume, in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer or any further payment or transfer of such funds; and it is further

157

158

ORDERED that this restraining order shall be and remain subject to the provisions of the two modifying orders signed and filed on January 31, 1945; and it is further

ORDERED that this restraining order shall expire at 12 Midnight on March 18, 1945 or on the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner.

159

Issued at New York, New York, on this 7th day of March, 1945 at 10:15 o'clock A. M.

/s/ SAMUEL MANDELBAUM
United States District Judge.

160 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF EDWARD S. STIMSON—March 9, 1945.

EDWARD S. STIMSON, being first duly sworn deposes and says that he is a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C., that with the assistance of others he has made an investigation of the extent and nature of business done in the United States by the foreign corporate defendants and that by this investigation he ascer-
161 tained the following facts:

SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO (FORMINIERE).

Defendant, Forminiere, is a corporation organized under the laws of the Belgian Congo. While the Belgian Government owns stock interest in this company, the stock which it owns has no voting power and the Belgian Government does not direct its management. At the time of filing of the complaint, approximately 50% of the voting stock of this company was owned by the defendant, Albert
162 E. Thiele and Herbert H. Vreeland (the latter now deceased), as trustees under the Congo Mines Participation Agreement. Its principal business consists of mining diamonds and marketing them through the Diamond Trading Company, Ltd., pursuant to the unlawful arrangement alleged in the complaint.

Forminiere is the largest producer of industrial diamonds in the world, producing approximately two-thirds of the world's supply. It has in excess of 16,000 employees. All of its property except as hereinafter stated is located outside the United States; all of its officers with the exceptions hereinafter noted also reside outside of the United States. For many years prior to the date of the filing of the complaint herein and up to the present time, the

business which the defendant Forminiere has conducted in the Southern District of New York has included the following: 163

Since about 1910 two directors of said corporation have continuously resided in the Southern District of New York and have continuously performed their duties as Directors of Forminiere.

Since 1910 to date, Sydney H. Ball has been continuously employed by Forminiere as purchasing agent and consulting geologist. Said Sydney H. Ball maintains offices at 26 Beaver Street; New York, New York, and at said offices has continuously performed most of his duties as consulting geologist of Forminiere. Some of the duties performed by Ball are hereinafter described. 164

Forminiere pays part of the office expenses for the offices maintained by said Ball at 26 Beaver Street. The said Ball, from his offices at 26 Beaver Street, carries on an extensive correspondence on behalf of Forminiere. The stationery which he uses has at the top of its letterhead, in large type, Societe Internationale Forestiere et Miniere du Congo and below that, Sydney H. Ball, Consulting Geologist. A copy of said stationery is attached hereto and made part hereof.

For many years prior to the date of the filing of this complaint Forminiere has continuously maintained bank accounts in the Southern District of New York. Since 1910, Forminiere has continuously maintained an account at The Chase National Bank. This account is in the name of "Sydney H. Ball, Consulting Geologist, Forminiere." 165

Until 1941 the said Ball was authorized by Forminiere to draw on said account by check signed by him. Since 1941, Ball and one of the two American directors of Forminiere were authorized to sign checks on said account.

During the year 1944 the balance maintained by Forminiere in the Chase account ranged from half a million dollars to one million dollars. The account has been a very active one, for example, during the first six months of 1944, approximately 295 checks were drawn on this account.

166 Forminiere also maintained a bank account at the Guaranty Trust Company in the name of "Societe Internationale Forestiere et Miniere du Congo" from May, 1939 to January 4, 1944. The balance varied from $7,000 to $44,000. Originally Whelpley and Vreeland were authorized to draw on the account jointly. Later Ball and Sturm were empowered to draw upon it, using checks countersigned by Vreeland or Whelpley.

Forminiere purchases in this country a large portion of the supplies required to house, feed and shelter its more than 16,000 employees, and substantially all of the equipment, machinery and supplies required for the operation
167 of its mines and mills, the greater part of said supplies and equipment being purchased for Forminiere by the said Sidney H. Ball. Ball receives requests for equipment and supplies from Forminiere, selects the supplier and the supplies and equipment required by Forminiere, makes the purchases and pays for them by drawing checks on the bank account in the Chase National Bank described above.

The current purchases of Forminiere in this country aggregate about a million dollars a year. The scope of Ball's agency in the United States is indicated by the circumstance that most of the substantial contracts of purchase reflected in this figure were consummated here by Ball, and
168 the further circumstance that Ball to procure the release of $16,000 frozen by the temporary restraining order in the instant proceedings, represented that he would cause the directors of Forminiere to replace the funds so released, and that following such representation replenishment of the fund was in fact accomplished.

The purchasing activities conducted by Ball in the Southern District on behalf of Forminiere are frequent and continuous. The type of equipment and supplies purchased and the separate purchases are too voluminous to set forth herein. Some of the typical purchases include the following: aluminum and its alloys; chemicals; copper wire; pipes; sheets; diesel engines; a steam shovel; electrical machinery; equipment and supplies; fuel oil; hardware; household

equipment; hospital supplies; hydraulic pumps; iron bars 169
and rods; car wheels and axles; castings; lathes; motors; paints, oils and varnishes; plates, rails, railroad truck equipment; typewriters; wire fencing; rubber manufactures; wheelbarrows.

Sidney H. Ball as purchasing agent and consulting geologist for Forminiere carries on from his offices at 26 Beaver Street in the Southern District of New York correspondence with the manufacturers and suppliers in order to conclude the voluminous purchases in part enumerated above. The equipment purchased is consigned by manufacturers and suppliers to Ball and inspected and accepted by him in the Southern District of New York. Ball also arranges for the 170
packaging and transportation of the material and supplies to Forminiere in Africa.

In order to export the supplies and equipment purchased by Forminiere, as above described, Forminiere must obtain export licenses from the United States. Moreover, a large part of such supplies and equipment comprise critical items, and in order to obtain such material and supplies, Forminiere must obtain priorities from the War Production Board. Ball, as consulting geologist of Forminiere, carries on extensive negotiations and holds numerous conferences with officials of the United States Government in order to obtain priorities and export licenses. In order to obtain 171
such permits one must satisfy the government officials in charge of the matter as to Forminiere's need for the equipment and supplies and as to its importance to the war effort. Ball, as consulting geologist, prepares applications for licenses and priorities in the Southern District; such applications are signed "Societe Internationale Forestiere et Miniere du Congo, by Sidney H. Ball, Consulting Geologist". The supplies and equipment purchased by Forminiere in the Southern District are essential for the continued operation of Forminiere's mines and mills and without such equipment and without such priorities Forminiere would not be able to conduct its business. Since the outbreak of the European war in 1939, the United States has been the principal source of supply for the material above described.

172 COMPANHIA DE DIAMANTES DE ANGOLA
(DIAMANG)

Defendant, Diamang, is a corporation organized under the laws of Portugal. Its principal business consists of mining diamonds and marketing them through the Diamond Trading Company pursuant to the unlawful arrangement alleged in the complaint in this case. Diamang produces several hundred thousand carets of diamonds annually. All of its property, except as hereinafter stated, is situated outside of the United States; all of its officers with the exception subsequently noted, also reside outside the United States. Continuously and for many years
173 prior to the date of the filing of the complaint in this case and up to the present time, Diamang has transacted business in the United States in the Southern District of New York and the business which the defendant Diamang has so conducted has included the following:

Since before 1915 two directors of said corporation have continuously resided in the Southern District of New York and have continuously performed their duties as directors of Diamang.

Since 1915 and to the date of the filing of the complaint in this case, George K. Sturm has been continuously employed by Diamang as purchasing agent and auditor. Said
174 George K. Sturm maintains offices at 26 Beaver Street, New York, New York and at said offices has continuously performed most of his duties as purchasing agent and auditor of Diamang. Some of the duties performed by Sturm are hereinafter described.

Diamang pays part of the office expenses for the offices maintained by said Sturm at 26 Beaver Street. Sturm, from his office at 26 Beaver Street carries an extensive correspondence on behalf of Diamang. His signature appears on letters at the top of which appear the words COMPANHIA DE DIAMANTES DE ANGOLA and below that, 26 BEAVER STREET. A copy of one of said letters is attached hereto and made a part hereof.

For many years prior to the date of the filing of the complaint in this case Diamang has continuously main-

tained bank accounts in the Southern District of New York. 175
For many years and to the date of the filing of the complaint in this case, Diamang has continuously maintained an account at the Guaranty Trust Company, New York City. This account is in the name of "Companhia de Diamantes de Angola". The balance maintained in this account is in the neighborhood of $100,000. The account could be drawn upon by the joint signatures of any two of the following three persons, Sturm and the two American directors of Diamang. The account has been an active one.

Diamang purchases in this country a large portion of the supplies required to house, feed and shelter its employees, and substantially all of the equipment, machinery 176
and supplies required for the operation of its mines and mills, the greater part of said supplies and equipment being purchased for Diamang by the said George K. Sturm, its purchasing agent and auditor. Sturm receives requests for equipment and supplies from Diamang, selects the supplier and the supplies and equipment required by Diamang, makes the purchases and pays for them by drawing checks on the bank account in the Guaranty Trust Company described above.

The supplies and equipment purchased by Diamang in this country amount to several hundred thousand dollars annually. The purchasing activities conducted by Sturm 177
in the Southern District of New York on behalf of Diamang are frequent and continuous. The type of equipment and supplies purchased and the separate purchases are too voluminous to set forth herein. Some typical purchases are as follows: Wire rope, pumps, motors, wrenches, valve refacing machine, grinding wheels, gauges, inserted tooth saws, surveying compasses, steel shovel blades, belt fasteners, and rubber hose.

George K. Sturm, as purchasing agent and auditor for Diamang, carries on from his office at 26 Beaver Street in the Southern District of New York, correspondence with the manufacturers and suppliers in order to conclude voluminous purchases described above. The equipment purchases are consigned by manufacturers and suppliers

178 to Sturm and inspected and accepted by him in the Southern District of New York. Sturm arranges for the packaging and transportation of the material and supplies to Diamang in Africa. Diamang, in order to export the supplies and equipment purchased by Diamang as above described, must first obtain export licenses from the United States. A large part of such supplies and equipment are critical items and in order to obtain them, Diamang must secure a priority from the War Production Board. Sturm, as purchasing agent and auditor of Diamang, carries on extensive negotiations and holds conferences with officials of the United States Government in order to obtain pri-
179 orities and export licenses. In order to obtain such permits, it is necessary for Sturm to satisfy Government officials as to Diamang's needs for equipment and supplies and of its importance to the war effort. Sturm, as purchasing agent and auditor, prepares applications for licenses and priorities in the Southern District of New York; such applications are signed George K. Sturm, but the application is made on behalf of "Companhia de Diamantes de Angola". Equipment and supplies purchased by Diamang in the Southern District of New York are necessary for the continued operation of Diamang's mines and mills. Without such equipment and priorities Diamang would not be able to conduct its business.

180

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD.

Defendant De Beers owns 80% of the capital stock of defendant, the Diamond Corporation, Ltd.; the remaining 20% being owned by the Consolidated Diamond Mines of Southwest Africa, which De Beers controls. Defendants De Beers and Diamond Corporation each own 50% of the stock of the Diamond Trading Company. De Beers controls and manages the activities of the Diamond Corporation and the Diamond Trading Company.

All the officers and employees of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd. reside outside of the United States and

to the knowledge of deponent, all the property belonging 181
to the three corporations, with the exceptions hereinafter set forth, is located in countries outside of the United States.

The Diamond Trading Company controls and markets, pursuant to the unlawful arrangements described in the complaint, 95% of the world's supply of industrial and gem diamonds. The United States is by far the largest market in the world for gem diamonds and approximately 90% of all industrial diamonds sold by the Diamond Trading Company are purchased by brokers and dealers located in the United States.

At the time of the filing of the complaint herein and for 182
many years prior thereto, the three companies, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd. transacted business in the United States and more particularly in the Southern District of New York. The activities of the three companies in the United States include:

For many years prior to the filing of the complaint, the three companies have followed the practice of regularly sending their officers and employees to the United States to transact the business of the three companies.

Among the officers and employees who come to the United States to transact business for the three corporations are Sir Ernest Oppenheimer, Chairman of the Boards 183
of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Harold Thomas Dickinson, Technical Director of De Beers Consolidated Mines, Ltd., Fergus Rogers, Lute J. Parkinson, Assistant General Manager of De Beers Consolidated Mines, Ltd., and Stanley Routley. Such officers and employees have stayed in the United States for various periods of time for the purpose of transacting business for the three companies. The stay of some of these officers or employees extended over periods of months. Harold T. Dickinson spent most of the years 1941 and 1942 in the United States. Parkinson came to the United States in August, 1943 and his stay in this country lasted until February, 1944. While in this country such officers and employees have maintained

184 offices in the Southern District of New York in space furnished either by the N. W. Ayer & Co., 30 Rockefeller Plaza, New York, N. Y. or by the Newmont Mining Co. of 14 Wall Street, New York, N. Y. While such officers and employees were in the Southern District, in addition to directing the advertising and publicity campaign which the three companies carry on in the United States, reported to their home office on the market condition in respect to diamonds in the United States; investigated complaints made by customers of the Diamond Trading Company in the United States; conferred with brokers and dealers of diamonds in order to promote the business and good-will
185 of the three companies; carried on negotiations with officials of the United States Government in respect of selling large amounts of diamonds; participated in wage negotiations carried on by the diamond cutters of the Diamond Makers Protective Union; displayed and sold certain quantities of diamonds to the trade in this country; and carried on other activities in behalf of the three corporations.

De Beers has for many years maintained bank accounts in the Southern District of New York including accounts with the Standard Bank of South Africa, Ltd. of 67 Wall Street, New York, N. Y., Barclay's Bank, 120 Broadway, New York, N. Y. and Chase National Bank, 18 Pine Street,
186 New York, N. Y. in its own name and in the names of employees.

The three companies presently carry on and have for many years carried on an extensive public relations and advertising campaign in the United States designed to increase their sales of diamonds in this country.

De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Co. maintained in the New York World's Fair in the year 1939 to 1941 an extensive display of diamonds having a value of approximately eight million dollars. After the World's Fair closed these diamonds were kept for some time in safe deposit boxes maintained by De Beers at the Chase Safe Deposit Co. and Rockefeller Center Bonded Warehouse. Some of these diamonds were released from bond, customs duty paid by

De Beers and sold within the Southern District of New York. 187

De Beers also contributes sums of money to associations such as the Gemological Institute of America, the American Gem Society, Jewelry Industry Publicity Board, to assist in the activities of these associations which foster the sale of diamonds by promotional and publicity work. De Beers financed the publication in the United States of certain books such as "The Story of Diamonds" issued by the Chicago Jewelers' Association and "Famous Diamonds of the World". Both of these books are sold in the United States by the Gemological Institute of America.

De Beers employs the N. W. Ayer & Co., 30 Rockefeller Plaza, New York, N. Y. to assist in its advertising and public relations work in this country. 188

The three companies regularly advertise in leading publications in the United States. This advertising is designed to increase the sale of diamonds by the three companies in this country. As a result of the advertising, their sales have materially increased. Some of the advertisements set forth retail prices of diamonds for the purposes alleged in the complaint, tampering with, fixing and maintaining retail prices of gem diamonds in the United States. In addition to the advertising, N. W. Ayer engages in extensive publicity and public relations campaign in the United States on behalf of De Beers Consolidated Mines, Ltd., the Diamond Trading Company and the Diamond Corporation, Ltd. One of the purposes of the campaign is to discourage, eliminate and counteract publicity unfavorable to or critical of De Beers and its subsidiaries. Another purpose of the publicity campaign is to increase the sales of diamonds in this country and to promote good-will. 189

In addition to the advertising and public relations work referred to above, N. W. Ayer & Son, Inc., performed many services in the United States as agents for De Beers Consolidated Mines, Ltd., Diamond Corporation and Diamond Trading Company, Ltd. It investigates retail prices of diamonds by using shoppers, reports on Government price regulations for diamonds, reports complaints

made by customers of the Diamond Trading Co., investigates the number, wages, hours and union membership of diamond cutters in New York and Philadelphia; supplies office facilities for officers and employees of De Beers while they are in the United States, and receives and forwards mail for them. De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Co. have displayed and sold diamonds in the United States following the Worlds Fair.

The three companies displayed the diamonds which they had in this country at the Worlds Fair at the offices of N. W. Ayer for the purpose of securing customers for such diamonds. Officers of De Beers then in the United States sold some of the aforesaid diamonds at offices which the Diamond Trading Company then maintained at 30 Rockefeller Plaza, New York, N. Y. during May and June, 1941.

Harold Thomas Dickinson referred to above, an officer of defendant De Beers Consolidated Mines, Ltd., while in New York in 1941 and 1942 carried on negotiations with officials of the U. S. Treasury for the purpose of selling them large quantities of industrial diamonds and sold several million dollars worth of industrial diamonds. Some of the diamonds so sold were brought by Dickinson to the United States and there shown to officials of the Treasury, and sold by Dickinson to the Treasury Department. All the diamonds purchased by the United States Government were shipped by The Diamond Trading Company to the United States, inspected and payment made by the United States Government after delivery, inspection and acceptance in this country.

On or about September 1942 the Diamond Trading Company contracted to sell four and a half million carats of diamonds to the Metals Reserve Co., 811 Vermont Avenue, N. W., Washington, D. C. The contract provided for payment to the Diamond Trading Co. after the Diamond Trading Co. had shipped the material to New York and after inspection and acceptance of the material by repre-

sentatives of the Metals Reserve Co. in the Southern 193
District of New York.

Subsequently, the U. S. Commercial Co., an agency of the United States, entered into two contracts with the Diamond Trading Company, one on August 9, 1944, of 6,000 carats of industrial diamonds and another in 1943 of 10,000 carats of industrial diamonds. Contracts provided that the diamonds would be delivered by the Diamond Trading Company to the U. S. Commercial Co. at 60 Beaver Street, New York, N. Y. and that payment would be made after arrival of the stones in New York and after inspection and acceptance of the stones by persons designated by U. S. Commercial Co. Approximately eighty per cent of the 194
diamonds delivered under the August 9, 1944 contract were returned to the Diamond Trading Company because they were not satisfactory. Defendants De Beers Consolidated Mines, Ltd., Societe Generale de Belgique and Societe Internationale Forestiere et Miniere du Congo own and control the Banque Diamantaire Anversoise of 630 Fifth Avenue, New York, N. Y. and defendant De Beers Consolidated Mines, Ltd. utilizes such bank as a Credit Department of the Diamond Trading Co. in the United States. The sole business of the Banque Diamantaire consists of the financing of the purchase of diamonds. Approximately 75% of this business consists of financing brokers and dealers 195
located in the United States who wish to purchase diamonds from the Diamond Trading Company. The Diamond Trading Company ships many of the diamonds so financed and purchased by brokers and dealers in the United States to the aforesaid bank for delivery by it to such customers and brokers in the United States.

The Banque Diamantaire also furnishes credit information concerning prospective American purchasers to the Diamond Trading Company and otherwise assists the Diamond Trading Company's operations in the United States.

[Sgd.] EDWARD S. STIMSON

(Oath and Seal omitted.)

(Appendix containing Authorities omitted.)

196 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF JOHN E. F. WOOD—March 13, 1945.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JOHN E. F. WOOD being first duly sworn says:

1. I am a member of the firm of Root, Clark, Buckner & Ballantine, attorneys for the defendants, Societe Miniere
197 du Beceka (hereinafter called "Beceka"), Societe Internationale Forestiere et Miniere du Congo (hereinafter called "Forminiere") and Companhia de Diamantes de Angola (hereinafter called "Diamang"). This affidavit is made with reference to the affidavit dated March 9, 1945 of Edward S. Stimson, Special Assistant to the Attorney General, setting forth certain alleged facts concerning "the extent and nature of business done in the United States" by Forminiere, Diamang and certain of the other defendants herein.

2. These defendants have appeared specially in oppo-
198 sition to the Government's motion for a preliminary injunction and have expressly reserved all grounds of defense to the action, and more particularly the defenses that this Court has no jurisdiction over the persons of the defendants and that the complaint fails to state a claim upon which relief can be granted. It has also been shown to the Court that by reason of the fact that the defendants Forminiere and Beceka are located in Belgium and in the Belgian Congo and Diamang is located in Portugal and in Portugese West Africa, and by reason of the difficulties and delays of communications with them under war conditions, the obtaining and production of the facts which the Court will require for the proper determination of these defenses will consume a considerable period of time.

3. During the course of the oral argument, the Court 199
suggested that it might be necessary in connection with the motion for a preliminary injunction for the Government to make some showing as to the Court's jurisdiction. The Government's answer to this was that until the defendants had produced facts showing that the Court did not have jurisdiction, the alleged facts contained in the Government's papers should be taken as sufficient for the purpose of the present motion. The argument then proceeded on that basis, and I believe it was the understanding of all parties that the Court in deciding the Government's motion for a preliminary injunction would not deem it necessary to pass upon the jurisdictional 200
questions.

4. If the Court should now undertake to pass these questions, time will have to be given to the defendants to obtain proof of the facts involved. Because of the circumstances already referred to, this will require a considerable period of time. Moreover, the Court has indicated that it might refer these questions to a special master. All of this would unavoidably involve protracted delay. Meanwhile, it would be most unjust to the defendants to keep their property tied up pending a decision of these questions.

201

5. I submit, therefore, that the Court should proceed with the determination of the Government's motion for a preliminary injunction, leaving the questions of jurisdiction to be reserved for separate determination until such time as the facts necessary for such determination can be obtained.

JOHN E. F. WOOD.

(Oath and Seal omitted.)

202 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—
Filed March 16, 1945.

On the 13th day of March, 1945 at 4:00 o'clock P. M. at a conference in Judge Mandelbaum's chambers in the United States Court House, Foley Sq., New York, New York, at which were present Judge Samuel Mandelbaum and counsel for the Government and for each of the corporate defendants, Judge Mandelbaum stated that it would take him some time to decide the Government's motion
203 for a preliminary injunction in the above entitled cause and counsel for the Government then pointed out that the existing temporary restraining order expired on Sunday, March 18, 1945, that it took about three days to renew the temporary restraining order and to serve the 26 banks and asked that the temporary restraining order be continued for an additional 10 days or until the ruling on the Government's motion for a preliminary injunction whichever was sooner, and Judge Mandelbaum stated that he would renew the temporary restraining order; and it appearing that there is good cause for continuing the temporary restrain-
ing order in that the Court needs time to consider and
204 decide the motion for a preliminary injunction; it is therefore

ORDERED that the order issued on March 7th, 1945 amending and extending the temporary restraining order be and the same hereby is extended and continued to 12 o'clock midnight March 28, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this court; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this court and entered of record.

Issued at New York, New York on this 16th day of March, 1945 at 10:30 o'clock A. M.

(Sgd) SAMUEL MANDELBAUM,
United States District Judge.

205

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

EXEMPTION FROM TEMPORARY RESTRAINING ORDER—
Filed March 16, 1945.

On this 16th day of March, 1945, counsel for Companhia de Diamantes de Angola, appearing specially and without waiving objections to jurisdiction, represented to counsel for the Government that the right to hold shipping space reserved on behalf of Companhia de Diamantes de Angola would be lost unless assurances could be given that it would 206
be used, and requested that the machinery, equipment and supplies listed below, which had been paid for, be released from the temporary restraining order so that they can be exported to Companhia de Diamantes de Angola in Africa in said shipping space; and George K. Sturm having promised that he would endeavor to have Companhia de Diamantes de Angola deposit the value of said machinery, equipment and supplies in its bank account at the Guaranty Trust Company to be held subject to said temporary restraining order and that he believed Companhia de Diamantes de Angola would do so; and counsel for the Government consented thereto. The said machinery, equip- 207
ment and supplies, with approximate quantities are as follows:

Paid for by check:	Amount
Saw mill parts	$1,116.16
8,100 lbs. of Electrodes (used for welding)	606.05
3 reels and 7 coils of bare copper wire and cable	662.34
500 ft. of 3" water hose (used for sluicing)	435.00
3,300 ft. of flexible electric cord	53.42
5,000 shovel blades	3,850.00
10 pces. $\frac{3}{8}$" x 8" steel plates	143.35
26 Barcalo and Stillson wrenches 20 Hacksaw Frames	61.22
110 boxes of Belt fasteners	161.84

208	30 pcs. Belt fasteners 90 sets of cutting taps		78.82
	41 pcs. bearings		41.87
	3 surveying compasses		99.90
			$7,309.97
	Paid for under Letters of Credit:		
	33 pcs. of steel sheets	$292.91	
	Milling cutters	456.82	749.73
			$8,059.70

it is therefore

209 ORDERED, that the order issued herein on March 7, 1945, at 10:15 o'clock A. M., as extended by an order issued on the same day as this order, be and the same is modified to permit the removal from the United States of the above mentioned property of Companhia de Diamantes de Angola and to permit the forwarding to Companhia de Diamantes de Angola of all shipping papers relating thereto.

Issued at New York, N. Y., on this 16th day of March, 1945, at 10:30 o'clock A. M.

/S/ SAMUEL MANDELBAUM
United States District Judge

210

211

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF ALBERT E. THIELE—March 23, 1945.

STATE OF GEORGIA,
COUNTY OF GLYNN, } ss.:

ALBERT E. THIELE, being first duly sworn, deposes and says:

1. Copies of the summons and complaint herein were delivered to me on January 31, 1945. I have been told that such delivery was intended to constitute service of process herein upon me (1) as an individual party defendant, (2) as a Director of Societe Internationale Forestiere et Miniere du Congo (hereinafter called "Forminiere"), and (3) as a Director of Companhia de Diamantes de Angola (hereinafter called "Diamang"). I am making this affidavit for the purpose of stating the facts concerning my relation with said corporations. 212

2. As to Forminiere, I am not an officer of that Corporation, nor a managing agent, nor a general agent, and I have not been authorized by appointment or by law to receive service of process on its behalf. I am not authorized to, and I do not perform any of the functions of an officer. I have no authority to make contracts or commitments of any kind on behalf of the Corporation or in any way deal with any of its property, and no authority over any of its officers, employees or agents. 213

3. By letter dated December 6, 1944, the "Owners" under "Congo Mines Participation Agreement" proposed to Forminiere that I be elected a director of Forminiere as successor to Mr. Medley G. B. Whelpley. The "Owners" to whom I have referred were three individuals and a New

York charitable corporation, all of whom were citizens and residents of the United States of America. I am advised and believe that by virtue of participation agreement to which I have referred, the "Owners" are constituted as duly authorized representatives of various persons in the United States of America who have acquired a stock interest in Forminiere and are beneficial owners of approximately twenty-five per cent of the outstanding stock of Forminiere. The "Owners" as such representatives are entitled to nominate two of the members of the Forminiere Board, which now consists of at least eight members.

4. So far as I know, Forminiere has not yet taken any action with respect to the above mentioned proposal, and I am therefore not a director of that Corporation.

5. When I consented that my name be submitted to Forminiere as a candidate for a directorship, it was with the understanding that my function as a director would be solely to obtain information and to keep myself advised concerning the affairs of the Corporation to the extent that I might consider it advisable to do so in the interests of the persons represented by the "Owners", with respect to their investment in the stock of the Corporation. It was understood that my predecessor had not taken, and that I would not be expected to take, any part in the management of the Corporation. It was understood that my position as a director would empower me to attend and to vote at Directors' meetings, but I was not expected actually to attend such meetings in person as they are always held in Belgium, the Belgian Congo or elsewhere abroad, and never in the United States. It was understood that I was not expected to transact any kind of business on behalf of the Corporation in the United States.

6. As to "Diamang", I am not an officer of that Corporation, nor a managing agent, nor a general agent, and I have not been authorized by appointment or by law to receive service of process on its behalf. I have no authority to make contracts or commitments on behalf of the Corpo-

ration and no authority over any of its officers, employees or agents, and I do not perform any of the functions of an officer; and, except as hereinafter stated in paragraph 13, I have no authority to dispose of or in any way deal with any of its property. 217

7. By letter dated December 6, 1944, the "Owners" under "Angola Mines Participation Agreement" proposed to Diamang that I be elected a director of Diamang as successor to Mr. Medley G. B. Whelpley. The Angola "Owners" to whom I have referred in this paragraph were three individuals and a New York charitable corporation, all of whom were citizens and residents of the United States of America. I am advised and believe that by virtue of the Angola Mines Participation Agreement to which I have referred in this paragraph, the Angola "Owners" are constituted as duly authorized representatives of various persons in the United States who have acquired a stock interest in Diamang and are beneficial owners of approximately 14.78 per cent of the outstanding stock of Diamang. The "Owners" as such representatives have regularly nominated two of the members of the Diamang Board which, according to my latest advice, consists of a total of sixteen members. 218

8. Early in February I was notified that at a meeting of the Board of Directors of Diamang held in Lisbon, Portugal, on January 17, 1945, I had been appointed a director of Diamang, subject to Articles 8(2) and 9 of the "Statutes" of Diamang. 219

9. I am advised and believe that Article 8(2) of the "Statutes" of Diamang, properly translated, is as follows:

> "Every elected director must possess 500 Shares of the Company, which shall be deposited in its coffers or placed to its order wherever the Company may direct, and such Shares cannot be returned until after the expiration of the term of office and when the period to which Article 190 of the Commercial Code refers shall have elapsed."

220 I do not possess any of the stock of Diamang. The 500 Shares required by the above quoted provision to qualify me as a director have not yet been provided.

10. I am advised and believe that Article 9 of the "Statutes" of Diamang, properly translated, is as follows:

> "It is within the authority of the Board of Directors, subject to the approval of the first subsequent General Stockholders' meeting to be held, to fill any vacancies in the Board and to take measures for the temporary substitution of any director prevented from fulfilling his duties, by a Shareholder appointed by him and approved by the Board."

221 I am not a Shareholder of Diamang. I am advised and believe that the next General Stockholders' meeting of Diamang will not be held prior to June, 1945.

11. I do not consider that I am a qualified director of Diamang, and I have not purported to act in any way as a director of that Corporation.

12. When I consented that my name be submitted to Diamang as a candidate for a directorship, it was with the understanding that my function as a director would be solely to obtain information and to keep myself advised
222 concerning the affairs of the Corporation to the extent that I might consider it advisable to do so in the interests of the persons represented by the Angola "Owners", with respect to their investment in the stock of the Corporation. It was understood that my predecessor had not taken, and that I would not be expected to take, any part in the management of the Corporation. It was understood that my position as a director would empower me only to attend and to vote at Directors' meetings, and I was not even expected to attend such meetings in person, as they are always held in Portugal or elsewhere abroad, and never in the United States.

13. On or about January 2, 1945, I was authorized by Diamang to sign checks, together with any one of several

other persons, on the account which Diamang has recently 223
maintained with Guaranty Trust Company of New York. The purpose of such account is to finance the purchase in the United States of America of machinery, equipment and supplies. Such purchases are handled by Mr. George K. Sturm, but it has from the beginning been the practice of Diamang to require two signatures for any withdrawal of funds from the bank account, and it was for convenience in this connection that I was authorized to sign.

ALBERT E. THIELE.

(Albert E. Thiele)

224

(Oath, Seal and Certificate of County Clerk omitted)

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—Filed March 27, 1945.

At a hearing in this matter before Judge Samuel Mandelbaum on the 21st day of March, 1945, at which were present counsel for the Government and for each of the 225
corporate defendants, Judge Mandelbaum allowed the filing of further affidavits by Tuesday, March 27, 1945, and it appearing that there will not be sufficient time after March 27, 1945 to extend the temporary restraining order which expires March 28, 1945, and it appearing that there is good cause for continuing the temporary restraining order in that there will not be sufficient time after the 27th to extend the same before its expiration on March 28th and in that the Court will need more than one day in which to decide the motion for a preliminary injunction after the aforesaid affidavits are filed; it is therefore

ORDERED that the order issued on March 7, 1945 amending and extending the temporary restraining order, as modified

226 by an order exempting certain property issued March 16, 1945, be, and the same hereby is, extended and continued to 12 o'clock midnight April 7, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this Court; and it is further

ORDERED that this order be filed forthwith in the Office of the Clerk of this Court and entered of record.

Issued at New York, N. Y. on this 27th day of March, 1945 at 11:50 o'clock A. M.

227 /s/ SAMUEL MANDELBAUM,
United States District Judge.

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED]

AFFIDAVIT OF SYDNEY H. BALL—March 27, 1945.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

228 SYDNEY H. BALL, being first duly sworn, deposes and says:

1. Copies of the summons and complaint herein were delivered to me on January 30, 1945. I am advised that according to the Marshal's return such delivery is claimed to constitute service of process herein upon me as "General Agent and Cashier" of each of the following corporations:

(1) De Beers Consolidated Mines, Ltd.

(2) Diamond Corporation, Ltd.

(3) Diamond Trading Company, Ltd.

(4) Societe Miniere du Beceka (hereinafter called Beceka).

(5) Societe Internationale Forestiere et Miniere du Congo (hereinafter called Forminiere). 229

(6) Companhia de Diamantes de Angola (hereinafter called Diamang).

I have made an affidavit, sworn to March 8, 1945, with reference to De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., and Diamond Trading Company, Ltd. I am making this affidavit for the purpose of stating the facts concerning my relations with Beceka, Forminiere and Diamang and such facts as are known to me that may bear on the question whether any of said three corporations are doing business in the United States. 230

As to Beceka.

2. On information and belief, Beceka is a corporation organized under the laws of the Belgian Congo and is the owner of mining properties or concessions situated in the Belgian Congo. I have no personal knowledge of the business or affairs of that Corporation. I have no knowledge or information of any activities of Beceka in the United States, and so far as I know that Corporation has never had any office in the United States or transacted any business in the United States. 231

3. I have no connection whatsoever with Beceka. I am not an officer of Beceka, nor a managing or general agent, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process in its behalf. I am not authorized to and I do not perform any of the functions of a president, vice-president, treasurer, assistant trea , secretary or assistant secretary of the Corporation.

As to Diamang.

4. On information and belief, Diamang is a Portuguese corporation which owns and operates mining properties in Portuguese West Africa. I refer to the affidavit of George

232 K. Sturm being filed herewith for a statement of the business of that Corporation.

5. I have no connection whatsoever with Diamang. I am not an officer of the Corporation, nor a managing or general agent, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process on its behalf. I am not authorized to and I do not perform any of the functions of a president, vice-president, treasurer, assistant treasurer, secretary, or assistant secretary of the Corporation.

As to Forminiere.

233 6. On information and belief: Forminiere is a corporation organized under the laws of the Belgian Congo and is engaged in the operation of mines situated in the Belgian Congo. Its products (and those of its subsidiaries) include diamonds, tin, gold and various agricultural products. The entire production of Forminiere and its subsidiaries is sold in Africa or Europe and no sales have ever been made in the United States.

7. In connection with my professional practice as mining engineer and geologist, I have served for a number of years as consulting geologist for Forminiere. As such consulting geologist my duties are to furnish technical advice and 234 information to the Company with respect to its mining problems. For a number of years I have maintained an account with The Chase National Bank in the name of "S. H. Ball, Consulting Geologist, Forminiere", in which relatively small amounts were deposited from time to time and upon which I drew checks to pay my fees and expenses as consulting geologist. I also drew checks on this account to transfer funds, at the request of Forminiere, to the families of American employees at the mines, and to pay for purchases of materials which I was asked to supply to Forminiere from time to time. A statement in the affidavit of Edward S. Stimson, sworn to March 9, 1945, that checks on this account are required to be countersigned by a director of Forminiere, is incorrect.

8. During the present war emergency I have made substantial purchases of mining machinery, equipment and supplies at the request of Forminiere and with funds supplied by it, for shipment to the Belgian Congo. Prior to the invasion of Belgium in May 1940, on information and belief, Forminiere had purchased substantially all of its machinery, equipment and supplies in Europe or Africa and it made only occasional purchases in the United States and in relatively small amounts. Beginning in 1941, however, it was necessary that mining machinery, equipment and supplies be purchased in this country in order to continue and increase the production of industrial diamonds necessary for the war effort. 235 236

9. At the request of Forminiere I have attended to the purchase and shipment of such machinery, equipment and supplies. After receiving from Forminiere a list of needed items I make the purchases in the name of "S. H. Ball, Consulting Geologist, Forminiere" and also obtain United States export licenses and priority ratings upon applications made in the name of "S. H. Ball, Consulting Geologist, Forminiere". The purchase price and all incidental expenses are paid out of the aforesaid account with The Chase National Bank in the name of "S. H. Ball, Consulting Geologist, Forminiere". The balance in that account is maintained by deposits which are transmitted to this country from abroad at irregular intervals by Forminiere. The total price paid for the purchases which I made in the United States as above stated during the period 1941-1944 is as follows: 237

1941	$146,293.78
1942	191,988.93
1943	451,771.11
1944	537,434.24

As compared with these figures the purchases during the preceding ten years had aggregated less than $38,000 for the entire period.

238 10. I am advised and believe that the machinery, equipment and supplies which I have purchased are for use at the mines in the Belgian Congo owned or managed by Forminiere. None of the items were purchased for resale. I exercised no discretion as to what items should be purchased, decisions as to these matters all being taken in the Belgian Congo. I simply placed orders for the items specified by the management of the Corporation.

11. Forminiere has no office in the United States and is not listed in any telephone directory or any office directory. My work as Consulting Geologist is conducted at the offices of my firm, Rogers, Mayer & Ball, which are not in
239 any sense the offices of Forminiere.

12. For my services as Consulting Geologist, Forminiere has regularly paid me a retainer of approximately $7,000 per year, with some additional reimbursement for expenses. Since the middle of 1940 Forminiere has given me extra compensation of $2,000 per year on account of the special purchasing services conducted during the war period. There is no contract covering this extra compensation and the amount is determined by the Corporation in each year. Similarly the allowance for expenses has been increased during the war period. The annual allowance for expenses
240 has fluctuated from approximately $1,000 in 1938 to $8,500 in 1944.

13. In the affidavit of Edward S. Stinson, sworn to March 9, 1945, it is asserted as an instance of my authority in Forminiere that I undertook to cause the directors of Forminiere to replace certain funds in the United States and that such replacement was in fact accomplished. This is an unfair and incorrect statement. When the first temporary restraining order was entered in this case certain machinery, equipment and supplies were being loaded on a ship which was to sail within a few days and I understood that these items were urgently needed for the continued production at the mines in the Belgian Congo. Accordingly I requested representatives of the Anti-Trust Division, in-

cluding Mr. Stimson, to permit the goods to be shipped notwithstanding the temporary restraining order. These representatives asked whether I would undertake to have the value of the shipment, estimated at some $16,000, replaced by the transmission of new funds. In a letter to the Government attorneys dated January 30, 1945, written at their request in connection with this episode, I stated that I would "request and strongly recommend" that Forminiere replace the amount of $16,000. I certainly did not intend to have this statement construed as a representation on my part that I had authority to bind Forminiere in this respect, as in fact I had no such authority. 241

14. I am not an officer of Forminiere, nor a managing or a general agent, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process on its behalf. I have no authority over any of its officers, employees or agents. 242

I am not authorized to, and I do not, perform any of the functions of an officer of the Corporation, and except as hereinabove stated, I have no authority to make contracts or commitments of any kind on its behalf and no authority to dispose of or deal in any way with any of its funds or property.

243

(Sgd) SYDNEY H. BALL

(Oath and seal omitted.)

244 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF GEORGE K. STURM—March 27, 1945.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

GEORGE K. STURM, being first duly sworn, deposes and says:

1. I reside in Wood-Ridge, Bergen County, New Jersey.

245 2. Copies of the summons and complaint herein were delivered to me on January 30, 1945. I have been informed that according to the Marshal's return such delivery is claimed to constitute service of process herein upon me (1) as an individual party defendant, (2) as "General Agent Cashier" of Societe Miniere du Beceka (hereinafter called "Beceka"), (3) as "General Agent and Cashier" of Societe Internationale Forestiere et Miniere du Congo (hereinafter called "Forminiere"), and (4) as "General Agent and Cashier" of Companhia de Diamantes de Angola (hereinafter called "Diamang"). I am making this affidavit for the purpose of stating the facts con-
246 cerning my relations with said corporations and the facts known to me which may bear on the question whether any of said corporations is doing business in the United States.

AS TO BECEKA.

3. I have no connection whatsoever with Beceka. I am not an officer of the Corporation, nor a managing or general agent, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process on its behalf. I am not authorized to, and I do no perform any of the functions of a president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary of the Corporation. I have no authority to make contracts or commitments of any kind on

behalf of the Corporation, no authority to dispose of or 247
in any way deal with any of its funds or property, and no authority over any of its officers, employees or agents.

AS TO FORMINIERE.

4. On information and belief: Forminiere is a corporation organized under the laws of the Belgian Congo and is engaged in mining operations solely in the Belgian Congo. Its products are sold entirely in Africa or Europe and it has never sold anything in the United States or for shipment to the United States. It has no office in the United States and derives no income from United States sources. 248

5. I am not a managing or general agent of Forminiere, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process on its behalf. I am not authorized to, and I do not, perform any of the functions of a president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary of the Corporation. I have no authority to make contracts or commitments of any kind on behalf of the Corporation, no authority to dispose of or in any way deal with any of its funds or property, and no authority over any of its officers, employees or agents. 249

6. I am Secretary to the "Owners" under the "Congo Mines Participation Agreement". They are the duly constituted representatives of an American group which holds as an investment 25% of the stock of Forminiere.

7. I am informed and believe that the "Congo Mines Participation Agreement" was entered into under date of February 1, 1907, between Thomas F. Ryan, Daniel Guggenheim and Morton Trust Company (since succeeded by Guaranty Trust Company of New York); that Messrs. Ryan and Guggenheim had previously subscribed to 25% of the stock of Forminiere; and that the purpose of the Participation Agreement was to allow others to participate in that investment. Certain persons, called "Owners", are

250 authorized by the Agreement to exercise on behalf of those beneficially interested all the rights of owners in respect of the stock held under the Agreement. Provision is made for four "Owners", and in recent years the "Owners" have usually appointed attorneys-in-fact to act for them under general powers of attorney. Albert E. Thiele has been such an attorney-in-fact for two of the "Owners" since December, 1944. Herbert H. Vreeland, who died on January 31, 1945, had been for some time prior to his death as "Owner" and an attorney-in-fact for the fourth "Owner".

8. I am informed and believe that Forminiere has
251 320,000 shares of stock outstanding; that the Government of the Colony of Belgian Congo owns at least 174,800 shares, or 54.6%; that the stock so owned has full voting rights; and that the Colony of Belgian Congo therefore holds a controlling interest. 80,000 shares, or 25% of the total outstanding, are held under the Congo Mines Participation Agreement. I am informed and believe that the balance of the stock is owned by Belgian corporations or individuals.

9. As Secretary to the Congo "Owners", my duties are to keep their books, sign checks on the account of the "Owners", prepare and sign tax returns of the "Owners",
252 translate and summarize minutes and other documents received from Forminiere, prepare resumes of technical and annual reports, handle all correspondence, and generally attend to all of their affairs as "Owners". For these services, I receive a compensation at the rate of $2,238 per year, of which $1,038 is paid by the "Owners" and $1,200 is paid by Forminiere under an arrangement between Forminiere and the "Owners" by which Forminiere makes such payments as its contribution toward the work which I do for the "Owners". The "Owners" also pay $300 per year toward my office rent. Forminiere does not pay any part of the rent of my office.

10. I have for some years been a member of the College des Commissaires of Forminiere, having been so elected as

the nominee of the "Owners". There has long been an 253
understanding between the "Owners" and the Government of what is now the Belgian Congo, to the effect that the "Owners" are entitled to one representative on the College des Commissaires. The College des Commissaires is a group of six individuals who act as a kind of visiting committee on behalf of stockholders and who are privileged to examine all books and records of the Corporation and to submit reports to the stockholders. Under the "Statutes" of Forminiere, the books and records of the Corporation are available to the Commissaires only at the administrative office of the Corporation. Normally the administrative office is located at Brussels, Belgium. It has been in the 254
Belgian Congo during the war. It has never seemed desirable that I should incur the expense of traveling to the administrative office for that purpose, and I have therefore never taken any action as a Commissaire. The compensation I have received as a Commissaire during the past four years has averaged approximately $20 per year. Before the present war, I also received additional compensation, depending on the net profits of the Corporation, averaging approximately $1,500 per year.

11. On or about September 22, 1941, I was authorized by Forminiere to sign, together with another authorized person, checks drawn on an account maintained at the 255
Guaranty Trust Company of New York by Forminiere. This account was opened on May 16, 1939 as a precaution against the risks of the war, which was then threatening. The account was closed January 4, 1944. Since that time I have no authority to sign checks on any bank account of Forminiere.

As to Diamang.

12. On information and belief: Diamang is a corporation organized under the laws of Portugal and is engaged in the business of mining diamonds in Portuguese West Africa. It sells all of its products in Africa or Europe and has never sold anything in the United States or for ship-

ment to the United States. The corporation has no office in the United States and derives no income from United States sources.

13. I am not an officer of Diamang, nor a managing or general agent, nor a cashier, nor a director, and I have not been authorized by appointment or by law to receive service of process on its behalf. I have no authority over any of its officers, employees or agents. I am not authorized to, and I do not, perform any of the functions of a president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary of the Corporation. Except as stated hereinafter in paragraph 21, I have no authority to make contracts or commitments of any kind on its behalf and no authority to dispose of or deal in any way with any of its funds or property.

14. I am Secretary to the "Owners" under the "Angola Mines Participation Agreement". They are the duly constituted representatives of an American group which holds as an investment 14.78% of the stock of Diamang.

15. I am informed and believe that the "Angola Mines Participation Agreement" was entered into under date of May 1, 1913, between Thomas F. Ryan, Daniel Guggenheim and Guaranty Trust Company of New York. Under that Agreement the "Owners" hold 14.78% of the stock of Diamang, the purpose of the Agreement being to allow others to participate in that investment. The "Owners" are authorized by the Agreement to exercise on behalf of those beneficially interested all the rights of owners in respect of the stock held under the Agreement. Provision is made for four "Owners" and in recent years the "Owners" have generally appointed attorney-in-fact to act for them under general powers of attorney. Albert E. Thiele has been an attorney-in-fact for two of the "Owners" since December, 1944. Herbert H. Vreeland, who died on January 31, 1945, had been for some time prior to his death an attorney-in-fact for the other two "Owners".

16. I am informed and believe that Diamang now has 259
a total of 1,630,000 shares outstanding. The Angola "Owners" hold 240,936 shares, or 14.78% of the total amount outstanding. I am informed and believe that the other 85.22% is held by Portuguese, Belgian, English, and perhaps also French, interests. In consideration of granting the original concession, and an exemption from certain taxes, the Government of Portuguese West Africa received 5% of the stock of Diamang and a 40% participation in its profits, which participation in profits was subsequently increased to 50%.

17. As Secretary to the Angola "Owners", my duties are to keep their books, sign checks on the account of the 260
"Owners", prepare and sign tax returns of the "Owners", translate and summarize minutes and other documents received from Diamang, prepare resumes of technical and annual reports, handle all correspondence, and generally attend to all of their affairs as "Owners". For these services I receive a compensation at the rate of $2,538 per year, of which $1,038 is paid by the "Owners" and $1,500 is paid by Diamang under an arrangement between Diamang and the "Owners" by which Diamang makes such payments as its contribution toward the work which I do for the "Owners". The "Owners" also pay $300 per year toward my office rent. Diamang does not pay any part of 261
the rent of my office.

18. On or about October 17, 1940 Diamang opened an account with Guaranty Trust Company of New York. So far as I know, Diamang had no bank account in the United States prior to that time. I am advised and believe that Diamang established the above-mentioned account with Guaranty Trust Company of New York at least in part for the purpose of holding part of its funds in a currency other than the pound and the escudo, and at a place where the deposit would be comparatively free from the risks of war. The account was later used for the purpose of financing the purchases mentioned in paragraphs 20 and 21 below.

19. Two signatures are required for any withdrawal of funds from the above-mentioned account with Guaranty

262 Trust Company of New York. I am one of the persons so authorized, having been given such authority because of my position as Secretary to the "Owners" under the Angola Mines Participation Agreement. Mr. Albert E. Thiele has also been authorized to sign since about January 1, 1945, having been given such authority because of his position as attorney-in-fact for two of the "Owners". Mr. Vreeland held such authority prior to his death.

20. I am advised and believe that in normal times Diamang purchases practically all of its machinery, equipment and supplies in Portuguese West Africa, Portugal and other European countries. Early in 1941 Mr. H. T. Dickin-
263 son, a technical councillor of Diamang, came to this country with the object of arranging for the purchase here of certain machinery, equipment and supplies which Diamang was finding it difficult to obtain elsewhere, because of the war. Diamang asked the Angola "Owners" to give Mr. Dickinson such assistance as they could. At their request, I assisted him in arranging letters of credit and in obtaining priorities, export and Federal Reserve Bank licenses. During the calendar year 1941 Mr. Dickinson bought and paid for approximately $24,000 worth of property, payment being arranged from the Diamang account with Guaranty Trust Company of New York.

264 21. Mr. Dickinson left this country early in 1942. Since his departure I have been instrumental in handling purchases on behalf of Diamang in three different ways. A substantial part of the orders which Mr. Dickinson had placed while he was here have not yet been delivered. On these orders, and at the request of the "Owners", I attended to payment and to shipment. From time to time Diamang has requested the "Owners" to place orders on its behalf. At their request, I have placed the orders, attended to payment and to shipment. In December, 1943, and in January, 1944, I received from the Portuguese Purchasing and Trade Commission two batches of orders which had apparently been signed by the Field Manager of Diamang in Portuguese West Africa and which I was told

had been delivered by him to a representative of the United States Government in Portuguese West Africa, who forwarded it to the United States Government at Washington which, in turn, forwarded it to the Portuguese Purchasing and Trade Commission. After consulting the "Owners", I dispatched a cable to Diamang at Lisbon inquiring what Diamang wished to have done with respect to these orders and, at its request, I followed the same procedure with respect to them as I had with respect to the requests which Diamang had been making of the "Owners". The total purchase price paid in the years 1942, 1943 and 1944 on the orders placed by Mr. Dickinson or by me, including the orders which came through Washington, has been approximately as follows: 265 266

1942	$ 15,000
1943	26,000
1944	127,000

22. Diamang has continued to purchase some machinery, equipment and supplies in the United States by correspondence sent directly from Lisbon to independent brokers or suppliers. The goods so purchased are paid for from the account of Diamang with Guaranty Trust Company of New York.

23. For the work I have done in connection with purchases as above mentioned, I have received from Diamang a special remuneration of $500 for the year 1941, $500 for the year 1942, $1,000 for the year 1943, and $2,000 for the year 1944. There has never been any agreement or understanding in advance with respect to such compensation. Actually the remuneration for 1941 was not received until August 18, 1942. There is no understanding or agreement with respect to compensation for the year 1945. 267

24. To the best of my knowledge, information and belief: Diamang has no property in the United States, except a credit balance with Guaranty Trust Company of New York, as mentioned in paragraph 18 above, and such machinery, equipment and supplies as may have been pur-

268 chased for Diamang but not yet shipped; all of the machinery, equipment and supplies which I have been instrumental in buying for Diamang was purchased for use in connection with its mining operations in Portuguese West Africa; none of such machinery, equipment and supplies are purchased for resale.

(Sgd) GEORGE K. STURM.

(Oath and Seal omitted.)

---

269 IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

AFFIDAVIT OF LUCIUS W. MAYER—March 27, 1945.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

LUCIUS W. MAYER, being first duly sworn, deposes and says:

270 1. I am a member of the firm of Rogers, Mayer & Ball with offices at 26 Beaver Street, New York City.

2. Copies of the summons and complaint herein were delivered to me on January 30, 1945. I have been informed that according to the Marshal's return such delivery is claimed to constitute service of process herein upon Rogers, Mayer & Ball as "General Agent and Cashier" of each of the following: (1) De Beers Consolidated Mines, Ltd., (2) Diamond Corporation, Ltd., (3) Diamond Trading Company, Ltd., (4) Societe Miniere du Beceka (hereinafter called "Beceka"), (5) Societe Internationale Forestiere et Miniere du Congo (hereinafter called "Forminiere"), and (6) Companhia de Diamantes de Angola (hereinafter called "Diamang"). I am making this affidavit for the purpose

of stating the facts concerning the relations of Rogers, Mayer & Ball with Beceka, Forminiere and Diamang. 271

3. I have read a copy of the affidavit herein by Sydney H. Ball, sworn to March 27, 1945. Except as stated in said affidavit, neither the firm of Rogers, Mayer & Ball nor any member thereof has any connection whatsoever with Beceka, Forminiere or Diamang.

(Sgd.) Lucius W. Mayer

(Oath and Seal Omitted.)

In United States District Court. 272

[Title Omitted.]

Affidavit of John E. F. Wood—March 27, 1945.

State of New York, }
County of New York, } ss.:

John E. F. Wood, being duly sworn, deposes and says:

1. I am a member of the firm of Root, Clark, Buckner & Ballantine, attorneys appearing specially in this case for the corporate defendants Societe Miniere du Beceka (hereinafter called Beceka), Societe Internationale Forestiere et Miniere du Congo (hereinafter called Forminiere), and Companhia de Diamantes de Angola (hereinafter called Diamang). This affidavit is submitted with reference to the affidavit of Edward S. Stimson sworn to March 9, 1945. 273

2. As was stated in my affidavit sworn to March 13, 1945, the plaintiff's motion for a preliminary injunction against transfer of assets of the corporate defendants was brought on before the defendants had had an opportunity to prepare for motions to dismiss the complaint on the ground that the corporate defendants were not subject to the jurisdiction of the court. Our opposition to the motion on behalf of the defendants above named was made without prejudice

274 to the question of jurisdiction over the parties and we expressly reserved our right to bring on appropriate motions raising that question.

3. Although the said affidavit of Edward S. Stimson sworn to March 9, 1945 makes certain allegations on the question of "doing business", Mr. Stimson has taken the position on behalf of the plaintiff at hearings in this matter held on March 13 and March 21 that the question of jurisdiction over the parties is not now before the Court and that the decision upon the pending motion need not involve that question. I concur with this view of counsel for the plaintiff but since counsel's affidavit remains on file we cannot
275 permit it to go unchallenged, and certain affidavits are being submitted herewith in order to correct certain of the errors of fact in Mr. Stimson's affidavit and erroneous implications which might be drawn therefrom.

4. If the Court determines that it is necessary to pass upon the question of jurisdiction over the parties in connection with the pending motion, then I respectfully ask an opportunity to be heard upon that question. The issue is one of great importance and the facts and law should be carefully argued and briefed before any decision is reached. It would be most unfair to the defendants to have this basic issue decided as a mere incident to other matters with-
276 out the careful presentation which the importance of the issue merits. If, on the other hand, the Court comes to the conclusion that the question of jurisdiction over the parties may be reserved for later decision, then I shall respectfully ask that any order entered on the pending motion shall expressly be made without prejudice to the question of jurisdiction over the parties.

5. For the convenience of the Court I shall summarize in this affidavit the position of the three corporate defendants above named, my statements being made on information and belief based upon my investigation of the case and upon the affidavits of Albert E. Thiele, Sydney H. Ball, George K. Sturm and Lucius W. Mayer being submitted herewith.

BECEKA. 277

6. Beceka is a corporation organized under the laws of the Belgian Congo. It holds mining properties or concessions in the Belgian Congo, the products of which are sold exclusively in Africa or Europe. It has never sold anything in the United States or for shipment to the United States. Its offices are located abroad and it has no office in the United States. None of the persons claimed to have been served as a representative of this corporation has any connection with it of any kind. On these facts the contention that Beceka is doing business in the United States or has any representative in the United States is without merit. 278

DIAMANG.

7. Diamang is a Portuguese corporation operating mining properties in Portuguese West Africa. Its products are sold entirely in Africa or Europe and it has never sold anything in the United States or for shipment to the United States. It has no office in the United States and derives no income from United States sources.

8. One of the grounds on which it is alleged that Diamang is doing business in the United States is that it has certain stockholders here. Approximately 15% of the stock of Diamang is held by Americans under an agreement 279 known as the "Angola Mines Participation Agreement". Under this agreement, to which Diamang is not a party, certain individuals are constituted "Owners" of stock of Diamang and American investors have become entitled to participate in the beneficial ownership of the shares held by the "Owners". Such ownership by Americans of stock in a foreign corporation clearly does not bring that corporation within the United States for purposes of service of process.

9. By reason of American investments in Diamang two of the members of its Board of Directors (consisting of about 17 members) are Americans. These directors perform no executive or administrative function. They are merely entitled to attend directors' meetings, which are all

held abroad and to exercise their voting rights at such meetings. The place of residence of directors is not significant in determining where the corporation does business; the important question is where the Board of Directors functions and on this question the answer is clear that the Board functions only in Portugal.

10. The plaintiff further relies upon the fact that Diamang has caused purchases of supplies and equipment for its mines to be made in the United States, but this does not constitute doing business in the United States for purposes of service of process. Before the war Diamang purchased substantially all its machinery, equipment and supplies in foreign countries and made only occasional purchases in the United States and in limited amounts. Beginning in 1941 it was necessary that such machinery, equipment and supplies be procured in the United States because the sources of supply in Europe were overrun. In order to meet this emergency, Diamang arranged to have necessary purchases made by George K. Sturm who as Secretary to the "Owners" was known to the Corporation. The management of the Corporation in Lisbon informs Sturm as to just what is needed and provides the funds with which the purchases may be made. Every item so purchased is intended solely for use at the mines in Africa and none of it is intended for resale or is resold. It is well settled that the mere purchase of equipment and supplies within the United States does not constitute doing business here for purposes of service of process and I submit that this is particularly true where the great bulk of the purchases is made here not in the ordinary course of business, but rather because of unusual and temporary war conditions.

FORMINIERE.

11. Forminiere is a corporation formed under the laws of the Belgian Congo which operates mining properties in that colony. Its products are sold entirely in Africa or Europe and it has never sold anything in the United States or for shipment to the United States. It has no office in the

United States and derives no income from United States sources. 283

12. Although a majority of the voting stock of Forminiere is owned by the Government of the Belgian Congo, some point is made of the fact that 25% of the stock is held by Americans under an agreement known as the "Congo Mines Participation Agreement". The Corporation is not a party to this agreement and under it certain individuals are constituted "Owners" of stock of Forminiere and American investors have become entitled to participate in the beneficial ownership of the shares held by the "Owners".

13. As in the case of Diamang, the American stockholders are represented on the Board of Forminiere by two directors who perform no executive or administrative function. The directors' meetings are all held in Belgium or the Belgian Congo. 284

14. For a number of years Forminiere has retained Sydney H. Ball, a mining engineer and geologist, to ast as Consulting Geologist. His professional activities consist of advice upon technical problems in connection with the exploitation and operation of the mines. It is submitted that the retention of such a professional expert for consulting services does not bring the corporation within the United States. 285

15. The supplies which are purchased in the United States are intended solely for use in the operation of mines owned or managed by Forminiere and are not purchased for resale. The normal practice of Forminiere is to purchase substantially all its machinery, equipment and supplies in foreign countries. Because of war conditions it became necessary in 1941 and thereafter to purchase the greater part of these requirements in the United States. The purchases are made by Sydney H. Ball, Consulting Geologist, Forminiere. Even if the present value of purchases were normal, it would not constitute doing business under recognized principles. This is especially the case by reason of the fact that the present volume of purchases in

286 the United States results from the unusual emergency with which the Corporation has been faced since 1941, which has caused a dislocation of its business and temporary departure from its normal procedures.

(Sgd.) JOHN E. F. WOOD

(Oath and Seal Omitted.)

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

---

287 C. 29-446.

UNITED STATES OF AMERICA, Plaintiff,

against

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN and GEORGE K. STURM, De-
288 fendants.

Appearances:

Wendell Berge, Esq., Assistant Attorney General; Herbert A. Berman, Patrick A. Gibson and Edward S. Stimson, Esqs., Special Assistants to the Attorney General, Attorney for Plaintiff.

Cravath, Swaine & Moore, Esqs., Attorneys for De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., Diamond Trading Company, Ltd.; Robert T. Swaine, Bruce Bromley, Wm. Dwight Whitney, Jack W. Robbins, Esqs., of Counsel.

Root, Clark, Buckner & Ballantine, Esqs., Attorneys 289
for Defendants, Societe Internationale Forestiere et Miniere du Congo and Companhia de Diamantes de Angola; John E. F. Wood, Esq., of Counsel.

Hooker, Alley & Duncan, Esqs., Attorneys for Defendant, Societe Generale du Belgique, appearing specially; James B. Alley, Esq., of Counsel.

OPINION—March 28, 1945.

MANDELBAUM, D. J.:

The complaint in this action brought by the Government 290
charges the corporate defendants and certain individuals with engaging in an unlawful combination and conspiracy restraining foreign commerce in this country in industrial and gem diamonds, in violation of the Sherman Anti-Trust and the Wilson Tariff Acts. The complaint seeks injunctive relief to prevent the continuation of the illegal practices charged. It is alleged that as one of the results of the conspiracy, the United States Government has been prevented from accumulating a stockpile of industrial diamonds in this country for military purposes.

At the time of the filing of the complaint, the court signed a restraining order temporarily enjoining the corporate 291
defendants from withdrawing their assets in banks and from otherwise disposing of property belonging to the corporate defendants in the United States.

The Government is now moving for a temporary injunction to replace the restraining order pending the determination of the issues in this case.

The main question before this Court is whether or not the court has the power to issue the injunction prayed for. In my opinion, this Court clearly has the power to issue the injunction both under the Judicial Code and under Sec. 4 of the Sherman Act. The Judicial Code (28 U. S. C. A. Sec. 377) authorizes the United States Courts "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law". Sec. 4 of the

292 Sherman Act (15 U. S. C. A.) expressly provides that "before final decree, the Court may, at any time make temporary restraining order or prohibition as shall be deemed just in the premises". So much for the power of the Court to issue the injunction.

Having come to the conclusion that this Court has the power, the next problem which presents itself is whether or not this Court in the exercise of its discretion should issue the preliminary injunction on the facts before it on this motion.

The defendants are all foreign corporations. None of the defendants have filed answers to the complaint. I am
293 convinced from the facts appearing in the verified complaint and the affidavits in support of and in opposition to this motion that if the injunction does not issue, the assets of the corporate defendants will in all probability be withdrawn from this country. In that event, if the Government should succeed in establishing its cause, there would be no way to enforce the decree of the Court.

The resulting damage to the Government, if I were to deny this motion, is incomparably greater than any damage to the corporate defendants if I were to grant the motion.

Equity will take necessary steps to protect its jurisdiction, where, as here, there is a great probability that the
294 enforcement of its decrees will otherwise be frustrated.

During the course of argument, the question was raised by counsel of whether the Court should deal with the problem of the defendants' doing business here, as ancillary to the question of the preliminary injunction. I am not passing upon the defendants' doing business, because in my opinion, that question is not before the Court on the instant motion.

The motion is granted. Settle order on notice.

FINDINGS OF FACT.

1. The facts alleged in the verified complaint are adopted by the Court and incorporated herein as findings of fact for purposes of this motion only.

CONCLUSIONS OF LAW. 295

1. This Court has the power to grant the preliminary injunction prayed for under Sec. 4 of the Sherman Act and Sec. 377 of Title 28 U. S. C. A.

2. This Court in the exercise of its discretion grants the motion for a preliminary injunction.

Dated, March 28th, 1945.

SAMUEL MANDELBAUM,
U. S. D. J.

296

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

CIVIL No. 29-446.

UNITED STATES OF AMERICA,

Plaintiff,

against

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN and GEORGE K. STURM, 297

Defendants.

PRELIMINARY INJUNCTION—Filed April 3, 1945.

On the 2nd day of March 1945, there came on for hearing the motion of plaintiff, United States of America, for a preliminary injunction restraining the foreign corporate

298 defendants and after reading the verified complaint and the affidavits submitted by plaintiff and defendants and hearing argument and duly considering the same (but without considering the question whether the foreign corporate defendants are doing business in the United States, which question is not before the Court on this motion, and without prejudice to the rights of the foreign corporate defendants to have such question and the question of the sufficiency of service of process determined later), this Court, for the purposes of this motion only, adopts and incorporates herein as findings of fact the facts alleged in said complaint and upon said complaint and said affidavits finds
299 as facts: that defendants are foreign corporations and they could quickly withdraw their assets from the United States before the entry of a final decree in this cause; that if the preliminary injunction were denied, they would in all probability do so, in which event, if the Government should succeed in establishing its cause, there would be no way to enforce the decree of the Court; and that the resulting damage to the Government would be incomparably greater than any damage to the corporate defendants if the preliminary injunction were granted; and this Court concludes as a matter of law that under Section 4 of the Sherman Act and Section 377 of Title 28 U. S. C. A. the Court has power to issue a pre-
300 liminary injunction in the terms of the order which follows and that the Court should and does hereby exercise its discretion so to do and it is therefore, on motion of the pliantiff,

Ordered that the foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., each and all of them, their officers, agents, servants, employees and attorneys and all persons having notice of this order be enjoined from withdrawing money belonging to the corporate defendants from banks in the United States and from withdrawing diamonds or other property belonging to

the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States until this case has been finally determined and said foreign corporate defendants have complied with all orders and decrees which may be or have been rendered against them in this cause and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further 301

ORDERED that this preliminary injunction shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor shall this order apply to diamonds so purchased after January 29, 1945; and this preliminary injunction shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 nor to mining machinery equipment and supplies purchased for shipment abroad, or expenses incident thereto, paid for out of any of said funds sent from outside the United States after January 29, 1945. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants and any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 may assume, in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer or any further payment or transfer of such funds; and it is further 302 303

ORDERED that this preliminary injunction shall be and remain subject to the provisions of the two orders signed

304 and filed on January 31, 1945, modifying the temporary restraining order signed and filed on January 29, 1945 and the order of March 16, 1945 exempting certain property from the temporary restraining order; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 3rd day of April, 1945 at 1:30 o'clock P. M.

SAMUEL MANDELBAUM,
United States District Judge.

305

IN UNITED STATES DISTRICT COURT.

[TITLE OMITTED.]

MOTION FOR LEAVE TO TAKE DEPOSITIONS BEFORE ANSWER—
Filed April 3, 1945.

The United States of America moves the court for an order granting it leave to take the depositions of the officers and employees of the corporations having knowledge of the facts desired as set out below and of individuals, both
306 as listed below, for the purposes of discovery or for use as evidence in this action or for both purposes on the ground that their testimony is desired for use on the motion of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company to dismiss the action for want of jurisdiction over their persons and to quash the service of summons, for use on the same issues which the other foreign corporate defendants intend to raise, all as set forth in the supporting Affidavit of Edward S. Stimson attached hereto and filed herewith.

The United States of America moves the court that the order granting leave to take these depositions authorize it to issue subpoenas requiring the production of documentary evidence as follows: all correspondence and contracts with any of the defendants and all printed material,

advertisements, inter-office memoranda, memoranda and notations bearing upon or tending to show the doing of business or any activity by the foreign corporate defendants in the United States. The individuals whom and the corporations the personnel of which the Government desires to take depositions are as follows: 307

RUSSELL JOHNSON PARKER
120 Broadway
New York, N. Y.

ALBERT E. THIELE
120 Broadway
New York, N. Y.

GEORGE K. STURM
26 Beaver Street
New York, N. Y. 308

SYDNEY H. BALL
26 Beaver Street
New York, N. Y.

ROGERS, MAYER & BALL
26 Beaver Street
New York, N. Y.

NEWMONT MINING COMPANY
14 Wall Street
New York, N. Y. 309

AMERICAN METALS CO., LTD.
61 Broadway
New York, N. Y.

N. W. AYER & SON, INC.
30 Rockefeller Plaza
New York, N. Y.

MEDLEY C. B. WHELPLEY
120 Broadway
New York, N. Y.

BANQUE DIAMANTAIRE ANVERSOISE, S. A.
630 Fifth Avenue
New York, N. Y.

310 CHASE NATIONAL BANK
18 Pine Street
New York, N. Y.

CHASE NATIONAL BANK
11 Broad Street
New York, N. Y.

GUARANTY TRUST COMPANY, OF NEW YORK
140 Broadway
New York, N. Y.

STANDARD BANK OF SOUTH AFRICA, LTD.
67 Wall Street
311 New York, N. Y.

PIERRE CATTIER
10 Pearl Street
New York, N. Y.

GILBERT PERRIER
10 Pearl Street
New York, N. Y.

EMILE HEYRMAN
10 Pearl Street
New York, N. Y.

312 ATLANTIC OVERSEAS CORPORATION
10 Pearl Street
New York, N. Y.

INTERNATIONAL SALES CORPORATION
500 Fifth Avenue
New York, N. Y.

s/ EDWARD S. STIMSON

EDWARD S. STIMSON
Special Assistant to the Attorney General
Attorney for the Plaintiff

In United States District Court. 313

[Title Omitted.]

Affidavit of Edward S. Stimson—March 21, 1945.

State of New York }
County of New York } ss.:

Edward S. Stimson, being first duly sworn, deposes and says that he is a Special Assistant to the Attorney General with headquarters in Washington, D. C.; that he is one of counsel for the United States of America in the above entitled cause; that the complaint in the above en- 314
titled cause was filed on January 29, 1945; that a copy of the summons and complaint in this action was personally served on the individual defendants in the Southern District of New York as follows: Russell Johnson Parker, 31st day of January 1945, Albert E. Thiele, 31st day of January 1945; and George K. Sturm, 30th day of January 1945; that a copy of the summons and complaint was served on Solomon R. Guggenheim on the 17th day of February 1945, by delivering copies of the same to a responsible person at his residence, Trillora Court, Port Washington, New York; that a copy of the summons and complaint in this action was served on each of the foreign corporate defendants in the 315
Southern District of New York between January 30 and February 1, 1945 inclusive; that none of the defendants have filed an answer and that the only pleading filed by any of the defendants is a motion to dismiss for lack of jurisdiction over the person of defendant and to quash the service of summons filed by De Beers Consolidated Mines, Ltd., Diamond Corporation Ltd., and Diamond Trading Company on the 23rd day of February 1945; that counsel for Societe Generale de Belgique has objected to government counsel interviewing persons connected with corporations and individuals served with process as agents of Societe Generale de Belgique and that Government counsel has not felt free to interview any of the persons or corporations by their officers and employees who were

316 served with process as agents, cashiers or directors of the foreign corporate defendants; that meanwhile counsel for the defendant foreign corporations are busily engaged in interviewing these persons connected with corporations and individuals served as agents, cashiers and directors; that although an extension of one month to move, plead or answer was consented to by counsel for the Government, counsel for the foreign corporate defendants in a conference before Judge Samuel Mandelbaum on the 13th day of March 1945, urged that they needed additional time to secure affidavits on the question of doing business in the United States from abroad thus clearly indicating that
317 all of the foreign corporate defendants intend to raise the issue of jurisdiction over their persons.

s/ EDWARD S. STIMSON

(Oath and Seal Omitted.)

318

In United States District Court. 319

[Title Omitted.]

Motion for Stay—Denied April 3, 1945.

The defendants, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, and Societe Miniere du Beceka, in the above-entitled action respectfully represent to this Court that they are preparing a petition to the Supreme Court of the United States for a writ of certiorari to review the order of this Court granting a preliminary injunction against the transfer or disposition 320
of the assets of the corporate defendants. This petition will be presented at the earliest possible time and will be prosecuted with diligence. The petition is made in good faith and in the belief that it is meritorious.

Wherefore, the said defendants respectfully move this Court to stay the operation of said order and all proceedings herein relating to said preliminary injunction, until said petition for certiorari shall have been passed upon by the Supreme Court of the United States and until final determination of the matter in the event that said petition be granted.

321

Dated, New York, April 3, 1945.

Root, Clark, Buckner & Ballantine,
Attorneys for Societe Internationale,
Forestiere et Miniere du Congo,
Companhia de Diamantes de Angola,
Societe Miniere du Beceka.

By John E. F. Wood,
A Member of the Firm.

Motion denied. Samuel Mandelbaum, April 3, 1945.

322 CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States for the Southern District of New York, do certify that the foregoing is a true copy of papers on file in the said District Court of the United States in the therein entitled cause, as the same remain upon the records and files of the said District Court of the United States, and that this certification is made at the request of the attorneys for the petitioners for use in the Supreme Court of the
323 United States on an application for a writ of certiorari.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said District Court of the United States for the Southern District of New York, at the United States Court House, New York, this 5th day of April, A. D. 1945.

GEORGE J. H. FOLLMER
CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

324 [SEAL]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 23, 1945

The petition herein for a writ of certiorari to the District Court of the United States for the Southern District of New York is granted. The case is transferred to the summary docket and assigned for argument immediately following Nos. 1016 and 1017. Counsel are requested to discuss in their briefs and upon oral argument the question whether the order of the District Court may appropriately be reviewed at the present stage of the proceedings by a writ of certiorari under section 262 of the Judicial Code.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.